SECTION FIVE

Canadian TN Nonimmigrant pursuant To NAFTA

8 CFR Sec. 214.6 Canadian and Mexican citizens seeking temporary entry to engage in business activities at a professional level. (Sec. 214.6 revised 1/1/94; 58 FR 69212)

(a) General. Under Section 214(e) of the Act, a citizen of Canada or Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with the North American Free Trade Agreement (NAFTA).

(b) Definitions. As used in this section, the terms:

Business activities at a professional level means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

Business person, as defined in the NAFTA, means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

Engage in business activities at a professional level means the performance of prearranged business activities for a United States entity, including an individual. It does not authorize the establishment of a business or practice in the United States in which the professional will be, in substance, self-employed. A professional will be deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.

Temporary entry, as defined in the NAFTA, means entry without the intent to establish permanent residence. The alien must satisfy the inspecting immigration officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. In order to establish that the alien's entry will be temporary, the alien must demonstrate to the satisfaction of the inspecting immigration officer that his or her work assignment in the United States will end at a predictable time and that he or she will depart upon completion of the assignment. (Paragraph (b) revised 1/9/98; 63 FR 1331)

(c) Appendix 1603.D.1 to Annex 1603 of the NAFTA. Pursuant to the NAFTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions set forth in Appendix 1603.D.1 to Annex 1603. The professions in Appendix 1603.D.1 and the minimum requirements for qualification for each are as follows: 1/

Appendix 1603.D.1 (Annotated)

--Accountant--Baccalaureate or Licenciatura Degree; or
C.P.A., C.A., C.G.A., or C.M.A.
--Architect--Baccalaureate or Licenciatura Degree; or
state/provincial license. 2/
--Computer Systems Analyst--Baccalaureate or Licenciatura
Degree; or Post-Secondary Diploma 3/ or Post Secondary
Certificate 4/and three years' experience.
--Disaster relief insurance claims adjuster (claims adjuster
employed by an insurance company located in the territory of
a Party, or an independent claims adjuster)--Baccalaureate or
Licenciatura Degree and successful completion of training in
the appropriate areas of insurance adjustment pertaining to
disaster relief claims; or three years experience in claims
adjustment and successful completion of training in the
appropriate areas of insurance adjustment pertaining to
disaster relief claims.
--Economist--Baccalaureate or Licenciatura Degree.
--Engineer--Baccalaureate or Licenciatura Degree; or
state/provincial license
--Forester--Baccalaureate or Licenciatura Degree; or
state/provincial license
--Graphic Designer--Baccalaureate or Licenciatura Degree; or

Post-Secondary Diploma or Post-Secondary Certificate and three years experience.

--Hotel Manager--Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management and three years experience in hotel/restaurant management.

--Industrial Designer--Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

--Interior Designer--Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

--Land Surveyor--Baccalaureate or Licenciatura Degree or state/provincial/federal license.

--Landscape Architect--Baccalaureate or Licenciatura Degree.

--Lawyer (including Notary in the province of Quebec)--L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (five years); or membership in a state/provincial bar.

--Librarian--M.L.S., or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite).

--Management Consultant--Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement.

--Mathematician (including Statistician)--Baccalaureate or Licenciatura Degree.

--Range Manager/Range Conservationist--Baccalaureate or Licenciatura Degree.

--Research Assistant (working in a post-secondary educational institution)--Baccalaureate or Licenciatura Degree.

--Scientific Technician/Technologist 5/--Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research.

--Social Worker--Baccalaureate or Licenciatura Degree.

--Sylviculturist (including Forestry Specialist)--Baccalaureate or Licenciatura Degree.

--Technical Publications Writer--Baccalaureate or Licenciatura Degree, or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

--Urban Planner (including Geographer)--Baccalaureate or Licenciatura Degree.

--Vocational Counselor--Baccalaureate or Licenciatura Degree.

--MEDICAL/ALLIED PROFESSIONALS

--Dentist--D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license.

--Dietitian--Baccalaureate or Licenciatura Degree; or state/provincial license.

--Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States) 6/--Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.

--Nutritionist--Baccalaureate or Licenciatura Degree.
--Occupational Therapist--Baccalaureate or Licenciatura Degree; or state/provincial license.
--Pharmacist--Baccalaureate or Licenciatura Degree; or state/provincial license.
--Physician (teaching or research only)--M.D. Doctor en Medicina; or state/provincial license.
--Physiotherapist/Physical Therapist--Baccalaureate or Licenciatura Degree; or state/provincial license.
--Psychologist--state/provincial license; or Licenciatura Degree.
--Recreational Therapist--Baccalaureate or Licenciatura Degree.
--Registered nurse--state/provincial license or Licenciatura Degree.
--Veterinarian--D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license.

--SCIENTIST
--Agriculturist (including Agronomist)--Baccalaureate or Licenciatura Degree.
--Animal Breeder--Baccalaureate or Licenciatura Degree.
--Animal Scientist--Baccalaureate or Licenciatura Degree.
--Apiculturist--Baccalaureate or Licenciatura Degree.
--Astronomer--Baccalaureate or Licenciatura Degree.
--Biochemist--Baccalaureate or Licenciatura Degree.
--Biologist--Baccalaureate or Licenciatura Degree.
--Chemist--Baccalaureate or Licenciatura Degree.
--Dairy Scientist--Baccalaureate or Licenciatura Degree.
--Entomologist--Baccalaureate or Licenciatura Degree.
--Epidemiologist--Baccalaureate or Licenciatura Degree.
--Geneticist--Baccalaureate or Licenciatura Degree.
--Geochemist--Baccalaureate or Licenciatura Degree.
--Geologist--Baccalaureate or Licenciatura Degree.
--Geophysicist (including Oceanographer in Mexico and the United States)--Baccalaureate or Licenciatura Degree.
--Horticulturist--Baccalaureate or Licenciatura Degree.
--Meteorologist--Baccalaureate or Licenciatura Degree.
--Pharmacologist--Baccalaureate or Licenciatura Degree.
--Physicist (including Oceanographer in Canada)--Baccalaureate or Licenciatura Degree.
--Plant Breeder--Baccalaureate or Licenciatura Degree.
--Poultry Scientist--Baccalaureate or Licenciatura Degree.
--Soil Scientist--Baccalaureate or Licenciatura Degree.
--Zoologist--Baccalaureate or Licenciatura Degree.

--TEACHER
--College--Baccalaureate or Licenciatura Degree.
--Seminary--Baccalaureate or Licenciatura Degree.
--University--Baccalaureate or Licenciatura Degree.

(d) Classification of citizens of Mexico as TN professionals under the NAFTA.

(1) General. A United States employer seeking to classify a citizen of Mexico as a TN professional temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, with the Northern Service Center, even in emergent circumstances. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. The original document shall be submitted if requested by the Service.

(2) Supporting documents. A petition in behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

(i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.

(ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in Sec. 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico, Canada, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

(iv) Licensure for TN classification.

(A) General. If the profession requires a state or local license for an individual to fully perform the duties of that profession, the beneficiary for whom TN classification is sought must have that license prior to approval of the petition and evidence of such licensing must accompany the petition.

(B) Temporary licensure. If a temporary license is available and the beneficiary would be allowed to perform the duties of the profession without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations which would be placed upon the beneficiary. If an analysis of the facts demonstrates that the beneficiary, although under supervision, would be fully authorized to perform the duties of the profession, TN classification may be granted.

(C) Duties without licensure. In certain professions which generally require licensure, a state may allow an individual to fully practice a profession under the supervision of licensed senior or supervisory personnel in that profession. In such cases, the director shall examine the nature of the duties and the level at which they are to be performed. If the facts demonstrate that the beneficiary, although under supervision, would fully perform the duties of the profession, TN classification may be granted.

(D) Registered nurses. The prospective employer must submit evidence that the beneficiary has been granted a permanent state license, a temporary state license or other temporary authorization issued by a State Board of Nursing authorizing the beneficiary to work as a registered or graduate nurse in the state of intended employment in the United States.

(3) Approval and validity of petition.

(i) Approval. The director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the beneficiary's name, classification, Appendix 1603.D.1 profession, and the petition's period of validity.

(ii) Recording the validity of petitions. Procedures for recording the validity period of petitions are:

(A) If the petition is approved before the date the petitioner indicates that employment will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limits specified by paragraph (d)(3)(iii) of this section.

(B) If the petition is approved after the date the petitioner indicates employment will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date

requested by the petitioner, as long as that date does not exceed the limits specified by paragraph (d)(3)(iii) of this section.

(C) If the period of employment requested by the petitioner exceeds the limit specified in paragraph (d)(3)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) Validity. An approved petition classifying a citizen of Mexico as a TN nonimmigrant shall be valid for a period of up to one year.

(4) Denial of petition.

(i) Notice of intent to deny. When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of thirty days in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) Notice of denial. The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under Part 103 of this chapter.

(5) Revocation of approval of petition.

(i) General.

(A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may effect eligibility under Section 214(e) of the Act or Sec. 214.6. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) Automatic revocation. The approval of an unexpired petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) Revocation on notice.

(A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

((1)) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

((2)) The statement of facts contained in the petition were not true and correct;

((3)) The petitioner violated the terms or conditions of the approved petition;

((4)) The petitioner violated requirements of Section 214(e) of the Act or Sec. 214.6; or

((5)) The approval of the petition violated Sec. 214.6 or involved gross error.

(B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within thirty days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(6) Appeal of a denial or revocation of a petition.

(i) Denial. A denied petition may be appealed under Part 103 of this chapter.

(ii) Revocation. A petition that has been revoked on notice may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(7) Numerical limit.

(i) Limit on number of petitions to be approved in behalf of citizens of Mexico. Beginning on the date of entry into force of the NAFTA, not more than 5,500 citizens of Mexico can be classified as TN nonimmigrants annually.

(ii) Procedures.

(A) Each citizen of Mexico issued a visa or otherwise provided TN nonimmigrant status under Section 214(e) of the Act shall be counted for purposes of the numerical limit. Requests for petition extension or extension of the alien's stay and submissions of amended petitions shall not be counted for purposes of the numerical limit. The spouse and children of principal aliens classified as TD nonimmigrants shall not be counted against the numerical limit.

(B) Numbers will be assigned temporarily to each Mexican citizen in whose behalf a petition for TN classification has been filed. If a petition is denied, the number originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) When an approved petition is not used because the beneficiary does not apply for admission to the United States, the petitioner shall notify the service center director who approved the petition that the number has not been used. The petition shall be revoked pursuant to paragraph (d)(5)(ii) of this section and the unused number shall be returned to the system which maintains and assigns numbers.

(D) If the total annual limit has been reached prior to the end of the year, new petitions and the accompanying fee shall be rejected and returned with a notice stating that numbers are unavailable for Mexican citizen TN nonimmigrants and the date when numbers will again become available.

(e) Classification of citizens of Canada as TN professionals under the NAFTA.

(1) General. Under Section 214(e) of the Act, a citizen of Canada who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with the NAFTA.

(2) Application for admission. A citizen of Canada seeking admission under this section shall make application for admission with an immigration officer at a United States Class A port of entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. No prior petition, labor certification, or prior approval shall be required.

(3) Evidence. A visa shall not be required of a Canadian citizen seeking admission as a TN nonimmigrant under Section 214(e) of the Act. Upon application for admission at a United States port of entry, an applicant under this section shall present the following:

(i) Proof of Canadian citizenship. Unless travelling from outside the Western hemisphere, no passport shall be required; however, an applicant for admission must establish Canadian citizenship.

(ii) Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications. The applicant must present documentation sufficient to satisfy the immigration officer at the time of application for admission, that the applicant is seeking entry to the United States to engage in business activities for a United States employer(s) or entity(ies) at a professional level, and that the applicant meets the criteria to perform at such a professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer, in the case of a Canadian citizen seeking entry to provide prearranged services to a United States entity, and may be required to be supported by licenses, diplomas, degrees, certificates, or membership in a professional organization. Degrees, diplomas, or certificates received by the applicant from an educational institution not located within Canada, Mexico, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The documentation shall fully affirm:

(A) The Appendix 1603.D.1 profession of the applicant;

(B) A description of the professional activities, including a brief summary of daily job duties, if appropriate, which the applicant will engage in for the United States employer/entity;

(C) The anticipated length of stay;

(D) The educational qualifications or appropriate credentials which demonstrate that the Canadian citizen has professional level status;

(E) The arrangements for remuneration for services to be rendered; and

(F) If required by state or local law, that the Canadian citizen complies with all applicable laws and/or licensing requirements for the professional activity in which they will be engaged.

(f) Procedures for admission.

(1) Canadian citizens. A Canadian citizen who qualifies for admission under this section shall be provided confirming documentation (Service Form I-94) and shall be admitted under the classification symbol TN for a period not to exceed one year. Form I-94 shall bear the legend "multiple entry". The fee prescribed under Sec. 103.7(b) of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the Canadian citizen applicant shall be provided a Service receipt (Form G-211, Form G-711, or Form I-797).

(2) Mexican citizens. The Mexican citizen beneficiary of an approved Form I-129 granting classification as a TN professional shall be admitted to the United States for the validity period of the approved petition upon presentation of a valid TN visa issued by a United States consular officer and a copy of the United States employer's statement as described in paragraph (d)(2)(iii) of this section. The Mexican citizen shall be provided Form I-94 bearing the legend "multiple entry".

(g) Readmission.

(1) Canadian citizens. A Canadian citizen in this classification may be readmitted to the United States for the remainder of the period authorized on Form I-94, without presentation of the letter or supporting documentation described in paragraph (e)(3) of this section, and without remittance of the prescribed fee, provided that the original intended professional activities and employer(s) have not changed. If the Canadian citizen seeking readmission to the United States is no longer in possession of a valid, unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence in order to be readmitted in TN status. This alternate evidence may include, but is not limited to, a Service fee receipt for admission as a TN or a previously issued admission stamp as TN in a passport, and a confirming letter from the United States employer(s). A new Form I-94 shall be issued at the time of readmission bearing the legend "multiple entry".

(2) Mexican citizens. A Mexican citizen in this classification may be readmitted for the remainder of the period of time authorized on Form I-94 provided that the original intended professional activities and employer(s) have not changed. If the Mexican citizen seeking readmission to the United States is no longer in possession of a valid, unexpired Form I-94, he or she may be readmitted upon presentation of a valid TN visa and evidence of a previous admission. A new Form I-94 shall be issued at the time of readmission bearing the legend "multiple entry".

(h) Extension of stay.

(1) Mexican citizen. The United States employer shall apply for extension of the Mexican citizen's stay in the United States by filing Form I-129 with the Northern Service Center. The applicant must also request a petition extension. The request for extension must be accompanied by either a new or a photocopy of the prior certification on Form ETA 9029, in the case of a registered nurse, or Form ETA 9035, in all other cases, that the petitioner continues to have on file with the Department of Labor for the period of time requested. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the citizen of Mexico is required to leave the United States for business or personal reasons during the pendency of the extension request, the petitioner may request the director to cable

notification of the approval of the petition to the consular office abroad where the beneficiary will apply for a visa. An extension of stay may be authorized for up to one year. There is no specific limit on the total period of time a citizen of Mexico may remain in TN status.

(2) Canadian citizen.

(i) Filing at the service center. The United States employer of a Canadian citizen in TN status or United States entity, in the case of a Canadian citizen in TN status who has a foreign employer, may request an extension of stay by filing Form I-129 with the prescribed fee, with the Northern Service Center. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. If the alien is required to leave the United States for business or personal reasons while the extension request is pending, the petitioner may request the director to cable notification of approval of the application to the port of entry where the Canadian citizen will apply for admission to the United States. An extension of stay may be authorized for up to one year. There is no specific limit on the total period of time a citizen of Canada may remain in TN status.

(ii) Readmission at the border. Nothing in paragraph (h)(2)(i) of this section shall preclude a citizen of Canada who has previously been in the United States in TN status from applying for admission for a period of time which extends beyond the date of his or her original term of admission at any United States port of entry. The application for admission shall be supported by a new letter from the United States employer or the foreign employer, in the case of a Canadian citizen who is providing prearranged services to a United States entity, which meets the requirements of paragraph (e)(3)(ii) of this section. The fee prescribed under Sec. 103.7(b) of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the NAFTA.

(i) Request for change or addition of United States employer(s).

(1) Mexican citizen. A citizen of Mexico admitted under this paragraph who seeks to change or add a United States employer must have the new employer file a Form I-129 petition with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms for remuneration for services and evidence of required filing with the Secretary of Labor. Employment with a different or with an additional employer is not authorized prior to Service approval of the petition.

(2) Canadian citizen.

(i) Filing at the service center. A citizen of Canada admitted under this paragraph who seeks to change or add a United States employer during the period of admission must have the new employer file a Form I-129 petition with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms for remuneration for services. Employment with a different or with an additional employer is not authorized prior to Service approval of the petition.

(ii) Readmission at the border. Nothing in paragraph (i)(2)(i) of this section precludes a citizen of Canada from applying for readmission to the United States for the purpose of presenting documentation from a different or additional United States or foreign employer. Such documentation shall meet the requirements prescribed in paragraph (e)(3)(ii) of this section. The fee prescribed under Sec. 103.7(b) of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the NAFTA.

(3) No action shall be required on the part of a Canadian or Mexican citizen who is transferred to another location by the United States employer to perform the same services. Such an acceptable transfer would be to a branch or office of the employer. In the case of a transfer to a separately incorporated subsidiary or affiliate, the requirements of paragraphs(i)(1) and (2) of this section would apply.

(j) Spouse and unmarried minor children accompanying or following to join.

(1) The spouse or unmarried minor child of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be required to present a valid, unexpired nonimmigrant TD visa unless otherwise exempt under Sec. 212.1 of this chapter.

(2) The spouse and dependent minor children shall be issued confirming documentation (Form I-94) bearing the legend "multiple entry". There shall be no fee required for admission of the spouse and dependent minor children.

(3) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

(k) Effect of a strike. If the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress, and the temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may affect adversely the settlement of any labor dispute or the employment of any person who is involved in such dispute:

(1) The United States may refuse to issue an immigration document authorizing entry or employment to such alien.

(2) A Form I-129 seeking to classify a citizen of Mexico as a TN nonimmigrant may be denied. If a petition has already been approved, but the alien has not yet entered the United States, or has entered the United States but not yet commenced employment, the approval of the petition may be suspended.

(3) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, or whether the Service has been otherwise informed that such a strike or labor dispute is in progress, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(i) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated in the same manner as all other TN nonimmigrants;

(ii) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(iii) Although participation by a TN nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(4) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (k)(1) of this section, or the Service has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Commissioner shall not deny a petition, suspend an approved petition, or deny entry to an applicant for TN status.

(l) Transition for Canadian Citizen Professionals in TC classification and their B-2 spouses and/or unmarried minor children.

(1) Canadian citizen professionals in TC Classification.

(i) General. Canadian citizen professionals in TC classification as of the effective date of the NAFTA Implementation Act (January 1, 1994) will automatically be deemed to be in valid TN classification. Such persons may be readmitted to the United States in TN classification for the remainder of the period authorized on their Form I-94, without presentation of the letter or supporting documentation described in paragraph (e)(3) of this section, and without remittance of the prescribed fee, provided that the original intended professional activities and employer(s) have not changed. Properly filed applications for extension of stay in TC classification which are pending on January 1, 1994 will be deemed to be, and adjudicated as if they were applications for extension of stay in TN classification.

(ii) Procedure for Canadian citizens admitted in TC classification in possession of Form I-94 indicating admission in TC classification. At the time of readmission, such professionals shall be required to surrender their old Form I-94 indicating admission in TC classification. Upon surrender of the old Form I-94, such professional will be issued a new Form I-94 bearing the legend "multiple entry" and indicating that he or she has been readmitted in TN classification.

(iii) Procedure for Canadian citizens admitted in TC classification who are no longer in possession of Form I-94 indicating admission in TC classification. If the Canadian citizen seeking readmission to the United States is no longer in possession of an unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence described in paragraph (g)(1) of this section in order to be readmitted in TN status. A Canadian professional seeking to extend his or her stay beyond the period indicated on the new Form I-94 shall be required to comply with the requirements of paragraph (h)(2) of this section, including remittance of the fee prescribed under Sec.103.7 of this chapter.

(iv) Nonapplicability of this section to self-employed professionals in TC nonimmigrant classification. The provisions in paragraphs (l)(1)(i), (ii), and (iii) of this section shall not apply to professionals in TC nonimmigrant classification who are self-employed in this country on January 1, 1994. Effective January 1, 1994, such professionals are not authorized to engage in self-employment in this country, and may not be admitted in TN or readmitted in TC classification.

(2) Spouses and/or unmarried minor children of Canadian citizen professionals in TC classification.

(i) General. Effective January 1, 1994, the nonimmigrant classification of a spouse and/or unmarried minor child of a Canadian citizen professional in TC classification will automatically be converted from B-2 to TD nonimmigrant classification. Effective January 1, 1994, the spouse and/or unmarried minor child of a Canadian citizen professional whose TC status has been automatically converted to TN, or the spouse and/or unmarried minor child of such professional whose status has been changed to TN pursuant to paragraph (l) of this section, who is seeking admission or readmission to this country, may be readmitted in TD classification for the remainder of the period authorized on their Form I-94, without presentation of the letter or supporting documentation described in paragraph (e)(3) of this section, and without remittance of the prescribed fee, provided that the original intended professional activities and employer(s) of the Canadian citizen professional have not changed. Properly filed applications for extension of stay in B-2 classification as the spouse and/or unmarried minor children of a Canadian citizen professional in TC classification which are pending on January 1, 1994 will be deemed to be, and adjudicated as if they were applications for extension of stay in TD classification.

(ii) Procedure for spouses and/or unmarried minor children of Canadian citizens admitted in TC classification who are in possession of Form I-94 indicating admission in B-2 classification. Upon surrender of the Form I-94 indicating that the alien has been admitted as the B-2 spouse or unmarried minor child of a TC alien valid for "multiple entry," such alien shall be issued a new Form I-94 indicating that the alien has been readmitted in TD classification. The new Form I-94 shall bear the legend "multiple entry."

(iii) Procedure for spouses and/or unmarried minor children of Canadian citizens admitted in TC classification who are no longer in possession of Form I-94 indicating admission in B-2 classification. If the Canadian citizen seeking readmission to the United States is no longer in possession of an unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence described in paragraph (g)(1) of this section in order to be admitted in TN status. Spouses and/or children of Canadian citizen professionals seeking to extend their stay beyond the period indicated on the new Form I-94 shall be required to comply the requirements of paragraph (h)(2) of this section, including remittance of the fee prescribed under Sec. 103.7 of this chapter.

(iv) Nonapplicability of this section to spouses and/or unmarried minor children of self-employed professionals admitted in TC nonimmigrant classification. Paragraphs (l)(2)(i), (ii), and (iii) of this section shall not apply to the spouses and/or unmarried minor children of Canadian citizen professionals in TC nonimmigrant classification who are self-employed in this country on January 1, 1994. Effective January 1, 1994, such persons are not eligible for TD classification.

[54 FR 48579, Nov. 24, 1989]

Footnotes

1/ A business person seeking temporary employment under this Appendix may also perform training functions relating to the profession, including conducting seminars.

2/ The terms "state/provincial" and "state/provincial/federal license" mean any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

3/ "Post Secondary Diploma" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States.

4/ "Post Secondary Certificate" means a certificate issued, on completion of two or more years of post secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or academic institution created by federal or state law.

5/ A business person in this category must be seeking temporary entry for work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

6/ A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

Requirements for Admission for the TN classification as a Professional.

The NAFTA professional is unique to the North American Free Trade Agreement (the NAFTA). The classification is not found in general immigration provisions in section 101(a)(15) of the INA; rather, it is included in section 214(e) of the INA. Under NAFTA, a Canadian or Mexican citizen who seeks temporary entry into the United States as a professional may be admitted to the United States under the provisions of the NAFTA as a TN (for Trade NAFTA). The TN is limited to Canadian or Mexican professionals employed on a professional level. A professional is defined as a business person seeking entry to engage in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, if the business person otherwise qualifies under existing, general immigration requirements for temporary entry into the United States.

The NAFTA professional is modeled on the professional category in the predecessor trade pact, the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989 until the entry into force of the NAFTA on January 1, 1994. The provisions differ slightly for Canadian citizen applicants and Mexican citizen applicants. Presently, the number of Mexican citizens entering the United States as TN professionals under NAFTA is limited to 5,500. There is no numerical limitation on the number of Canadian citizen TN professionals.

As with the CFTA, admission as a TN under section 214(e) of the INA does not imply that the citizen of Canada or Mexico would otherwise qualify as a professional under sections 101(a)(15)(H)(i)(b) or 203(b)(3) of the INA. Note too that Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed. Section D of Annex 1603 is limited to the entry of a citizen of a Party country seeking to render professional-level services for an entity in another Party country.

Self-employment also clearly conflicts with the intent of the NAFTA Implementation Act and its accompanying Statement of Administrative Action, which states, at page 178, “Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed.” In this regard, Section B of Annex 1603, which deals with “traders and investors,” establishes the appropriate category of temporary entry for a citizen of a Party country seeking to develop and direct investment operations in another Party country. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the United States, therefore, must seek classification under section 101(a)(15)(E) of the INA.

Although the issue of self-employment was never specifically addressed under the regulations promulgated by the INS pursuant to the CFTA Implementation Act, the bar on establishment of a business or practice in which the professional will be self- employed is consistent with the intent of the United States and Canada in entering into the CFTA. Since entry into NAFTA was not intended to substantively change the treatment of professionals, this explicit bar merely clarifies existing law.

Note that the bar on establishment of a business or practice in which the Canadian or Mexican citizen will be self-employed is in no way intended to preclude a Canadian or Mexican citizen who is self-employed abroad from seeking entry to the United States pursuant to a pre-arranged agreement with an enterprise owned by a person or entity other than him/herself located in the United States. On the other hand, a Canadian or Mexican citizen is precluded from entering this country in TN classification for the purpose of rendering pre-arranged services for a U.S. corporation or entity of which he or she is the sole or controlling shareholder or owner or over which he or she holds de facto control.

(B) **Pre-arranged Professional Services**. In order to obtain “TN” classification, a businessperson, including one who is self-employed, must be seeking entry to render pre-arranged professional services to an individual or an enterprise. If the business activities are to be rendered to an individual or an enterprise, the enterprise must be substantively separate from the businessperson seeking entry. Moreover, the business activities must not include establishment of a business or practice or any other type of activity in which the businessperson will be self-employed in the United States.

As used above, to constitute pre-arranged professional services, there must exist a formal arrangement to render professional service to an individual or an enterprise in the United States. The formal arrangement may be through an employee-employer relationship or through a signed contract between the businessperson or the businessperson’s employer and an individual or an enterprise in the United States.

(C) **Enterprise for Which the Professional Activities are to be Performed in the United States**. The enterprise in the United States for which the business activities are to be performed can take any legal form (as defined in Article 201 of the NAFTA), that is, "any entity entirely constituted or organized under applicable law, whether or not for profit, and whether privately- owned or government-owned, including any corporation, trust partnership, sole proprietorship, joint venture or other association."

(D) **Substantively Separate from the Business Person Seeking Entry as NAFTA Professional**. A businessperson is ineligible for classification as a NAFTA Professional if the enterprise in the United States offering a contract or employment to the businessperson seeking entry is a sole proprietorship operated by that businessperson. Moreover, even if the receiving enterprise is legally distinct from the businessperson, such as a corporation having a separate legal existence, entry as a NAFTA Professional must be refused if the receiving enterprise is substantially controlled by that businessperson.

(E) Substantial Control. Whether the businessperson "substantially controls" the U.S. enterprise will depend on the specific facts of each case. The following factors, among others, are relevant in determining what constitutes substantial control:

- whether the applicant has established the receiving enterprise;
- whether, as a matter of fact, the applicant has sole or primary control of the U.S. enterprise (regardless of the applicant's actual percentage of share ownership);
- whether the applicant is the sole or primary owner of the business; or
- whether the applicant is the sole or primary recipient of income of the business.

(F) Establishment of a Business in Which the Professional Will be Self-Employed in the United States. The following factors, among others are relevant in determining whether the business person will be self-employed in the United States:

- incorporation of a company in which the business person will be self-employed;
- initiation of communications (e.g., by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in the United States; or
- responding to advertisements for the purpose of obtaining employment or entering into contracts.

On the other hand, the following activities do not constitute the establishment of a business in which the business person will be self-employed in the United States:

- responding to unsolicited inquiries about service(s) which the professional may be able to perform; or
- establishing business premises from which to deliver pre-arranged service to clients.

Appendix 1603.D.1 to Annex 1603 of the NAFTA. Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6©. A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for an U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a businessperson to conduct seminars that do not constitute the performance of prearranged activities for an U.S. entity.

The terms "state/provincial license" and "state/provincial/federal license" means any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

A "Post Secondary Diploma" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States. A "Post Secondary Certificate" means a certificate issued, on completion of two or more years of post secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico,

an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

The following notes relate to NAFTA TN admissions in specific occupations:
(A) A business person in the category of "Scientific Technician/ Technologist" must be seeking temporary entry for work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics. These occupations do not ordinarily require a baccalaureate. Supporting documents could be an attestation from the prospective U.S. employer or the Canadian employer, or other documents establishing the individual possesses the skills set forth in Appendix 1603.D.1.

(B) A business person in the category of "Medical Laboratory Technologist (Canada) /Medical Technologist (Mexico and the United States)" must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

(C) Foreign medical school graduates seeking temporary entry in the category of "Physician (teaching or research only)" may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Registered nurses holding temporary state licenses or other temporary state authorization shall not be required to show they have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS). Admission of nurses should not be limited to the expiration date of either document.

(E) Sylviculturists and foresters plan and supervise the growing, protection, and harvesting of trees. Range managers manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate or Licenciatura degree in forestry or a related field or a state/provincial license is the minimum entry requirement for these occupations.

F) Disaster relief insurance claims adjusters must submit documentation that there is a declared disaster event by the President of the United States, or a state statute, or a local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or, if property damage exceeds $5 million and represents a significant number of claims, by an association of insurance companies representing at least 15 percent of the property casualty market in the U.S.

G) **Management consultants** provide services that are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They may be salaried employees of the U.S. entities to which they are providing services only when they are not assuming existing positions or filling newly created positions. As a salaried employee of such an U.S. entity, they may only fill supernumerary temporary positions. On the other hand, if the employer is a U.S. management-consulting firm, the employee may be coming temporarily to fill a permanent position. Canadian or Mexican citizens may qualify as management consultants by holding a Baccalaureate or Licenciatura degree or by having five years of experience in a specialty related to the consulting agreement.

(H) The **computer systems analyst** category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the

organization itself to identify its information needs and design computer systems that meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers.

(I) **Hotel Managers** must possess a Baccalaureate or Licenciatura degree in hotel/restaurant management. A post-secondary diploma in hotel/restaurant management plus 3 years of experience in the field will also qualify.

(J) **Animal and Plant Breeders** breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a Baccalaureate or Licenciatura degree.

(3) **Qualifications**. The NAFTA professional must meet the following general criteria:

- Be a citizen of Canada

- Be engaged in professional-level activities for an entity in the United States. Only those professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian citizens seeking to set up a business in the United States in which he or she will be self-employed.

- Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.

- Meet applicable license requirements. To practice a licensed profession, Canadian entrants must meet all applicable requirements of the state in which they intend to practice.

- Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

(4) **Application Process**.

Citizens of Canada. A citizen of Canada may apply for entry to the U.S. as a NAFTA professional at major land border ports-of-entry, airports handling international flights, or at the airports in Canada where the Service has established a pre-clearance/pre-flight station. The applicant must submit documentary proof that he or she is a citizen of Canada. Such proof may consist of a Canadian passport or birth certificate together with photo identification. No visa is required for entry, but the applicant may seek visa issuance if desired.

The application for entry as a TN must be made to an immigration officer. There is no written application, and no prior petition, labor certification, or prior approval is required for Canadian citizens applying for admission to the U.S. in TN status. Documentation from the prospective employer in the U.S., or from the foreign employer, must include the following:

- A statement (in the form of a letter or contract) of the professional-level activity listed in Appendix 1603.D.1, in which the applicant will be engaging and a full description of the nature of the job duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration;

- Evidence that the applicant meets the educational qualifications or alternative credentials for the activity listed in Appendix 1603.D.1; and

- Evidence that all licensure requirements, where required by state or local law, have been satisfied.

(5) **Terms of Initial Admission.**

(A) **Canadians**. A Canadian citizen who qualifies for admission under the NAFTA in the TN classification must remit the fee prescribed in 8 CFR 103.7 (presently $50.00 US) upon admission. Issue the applicant a Service fee receipt (Form G-211, Form G-711, or Form I-797) and a multiple entry Form I-94 showing admission in the classification TN for the period requested not to exceed 1 year.

At the time application for admission, the citizen of Canada will be subject to inspection to determine the applicability of section 214(b) of the Act (presumption of immigrant intent) to the applicant.

(6) **Procedures for Readmission.**

(A) **Canadians**. A Canadian citizen eligible for TN classification may be readmitted to the U.S. for the remainder of the period authorized on his or her Form I-94, without presentation of the letter or supporting documentation described above, provided that the original intended business activities and employer(s) have not changed. If the Canadian citizen is no longer in possession of a valid, unexpired Form I-94, the applicant must present substantiating evidence. Substantiating evidence may be in the form of a Service fee receipt for admission as a TN, a previously issued TN admission stamp in a passport, and a confirming letter from the U.S. employer(s). Upon readmission, issue a new multiple entry Form I-94.

(7) **Extension of stay.**

Canadians. A citizen of Canada admitted pursuant to NAFTA may seek an extension of stay as a TN through the filing of a Form I-129 by the U.S. employer with the Nebraska Service Center. No Department of Labor certification requirements apply to a Canadian citizen in TN status who is seeking to extend that status. The applicant must be in the U.S. at the time of filing the extension request. Provision is made for port-of-entry notification should the applicant depart the U.S. during the pendency of the application. An extension may be granted for up to 1 year.

A citizen of Canada is not precluded from departing the U.S. and applying for admission with documentation from a U.S. employer (or foreign employer, in the case of a Canadian citizen who is seeking to provide prearranged services at a professional level to a U.S. entity) which specifies that the applicant will be employed in the U.S. for an additional period of time. The applicant must meet the evidentiary requirements outlined above and the prescribed fee must be remitted upon admission.

Limitations. At the present time, there is no specified upper limit on the number of years a citizen of Canada may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications. However, section 214(b) of the Act is applicable to citizens of Canada who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of this statutory provision.

Except as limited by section 248 of the Act, a citizen of Canada who is currently in the U.S. in another valid classification is not precluded from requesting a change of status to TN. If such applicant is in the U.S. as an H-1 or L-1, he or she may be changed to TN status if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian J nonimmigrant who is subject to the 2-year foreign residence requirement may not change to TN classification, but may leave the U.S. and seek readmission as a TN.

(8) **Request for change/additions of U.S. employers**. A Canadian citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Nebraska Service Center. All documentary requirements pertaining to a citizen of Canada outlined above must be met. Employment with a different or with an additional employer is not authorized prior to INS approval of the petition.

Alternatively, the Canadian citizen may depart the United States and apply for reentry for the purpose of obtaining additional employment authorization with a new or additional employer. Documentary requirements outlined above must be met and the prescribed fee must be remitted upon readmission.

No action is required by a Canadian citizen who is transferred to another location by the U.S. employer to perform the same services. An example of such an acceptable transfer would be to a branch or office of the employer. If the transfer is to a separately incorporated subsidiary or affiliate, Form I-129 must be filed.

(9) **Spouse and unmarried minor children**. The spouse and unmarried minor children who are accompanying or following to join a TN professional, if otherwise admissible, are to be accorded TD (Trade Dependent) classification. These are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1. (Those persons who are normally exempt from nonimmigrant visa requirements include citizens of Canada and Landed Immigrants of Canada having a common nationality with Canadian citizens).

There is no requirement that the TD dependent be a citizen of Canada or Mexico.

No fee is required for admission of dependents in TD status (except the fee for the I-94) and they are to be issued multiple entry Forms I-94.

A TD spouse or child is not authorized to accept employment while in the U.S. in such status. Dependents in TD status may attend school in the U.S. on a full-time basis as such attendance is deemed incident to status.

(10)**Denial**. In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the TN documentary requirements, the Canadian citizen should be offered a hearing before an immigration judge provided the applicant is confident he or she, in fact, meets the requirements pursuant to the NAFTA, Appendix 1603.D.1 The request for a hearing is equivalent to a TN appeal or a reconsideration of the admitting officer's decision.

SUMMARY
CANADIAN TN PROCESSING INSTRUCTIONS

The application for entry as a TN must be made in person to an immigration officer at a port of entry. There is no written application, and no prior petition, labor certification, or prior approval may be required for Canadian citizens applying for admission to the U.S. in TN status. Documentation from the prospective employer in the U.S. must include the following:

- A statement (in the form of a letter or contract) of the professional-level activity listed in Appendix 1603.D.1, in which the applicant will be engaging and a full description of the nature of the job duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration;

- Evidence that the applicant meets the educational qualifications or alternative credentials for the activity listed in Appendix 1603.D.1; and

- Evidence that all licensure requirements, where required by state or local law, have been satisfied.

- Evidence of Canadian citizenship or oral declaration (if satisfied)

- Applicant must be otherwise admissible

Perform all database checks.

Collect fee: $50.00; issue fee receipt (G-211).

Admit on I-94 for period of agreement up to one year.
I-94 Departure copy: admission stamp annotated TN - stamp "Multiple Entry"
I-94 Arrival copy: reverse annotated with employer and occupation (It is very important to capture occupation information. INS has the obligation under NAFTA Article 1604.2 to share data specific to each occupation, profession or activity, with Canada and Mexico.)

Spouse and child are admitted TD for same period of time as TN; if they are not visa exempt they need an NIV issued by a U. S. Consulate or Embassy.

The information on the following page should be printed as a handout when admitting TN professionals. Please enter the name and telephone number of the port of entry.

Information About Your Admission as a TN Professional

You have been admitted to the United States as a Professional (TN) pursuant to the provisions of the North American Free Trade Agreement (NAFTA). You have been issued Form I-94 (Departure Record) that is stamped "multiple entry", showing the period of time for which you have been admitted. This is your employment authorization and you must retain it for the duration of your status as written on the admission stamp. You must present the I-94 each time you apply for readmission. When your employment terminates in the United States, you are required to depart the United States and return the I-94 to the Immigration and Naturalization Service.

Your dependents, if following to join you, will have to present copies of your entry documents, proof of citizenship and evidence of a legal relationship (i.e. marriage certificate, long form birth certificate) which entitles them to be properly classified as dependents (TD) of a TN professional. If they are not Canadian citizens or if they are not exempt a nonimmigrant visa, they will be required to present a TD nonimmigrant visa issued at a U.S. Embassy or Consulate.

As a TN, you are NOT authorized to:

1) Accept employment with any employer other than the employer for whom you were admitted to work, unless you receive permission from INS.
2) Continue to work or remain in the United States after your period of authorized stay has expired.

You may extend your status inside the United States by applying for an extension of stay on form I-129. You must file the I-129, and prescribed fee, with the Nebraska Service Center prior to the expiration of your current status. You must be physically present in the United States at the time of filing the extension of stay. Your application for extension also includes your dependents.

You may also depart the United States and apply for readmission. This is considered a new application and you will be required to present a current letter from your employer and all supporting documentation just as you did on your initial entry. You will also be required to pay the $50.00 processing fee. Your dependents will be required to accompany you in order to be properly readmitted.

For readmission to the United States after travel outside of the Western Hemisphere, you should present a copy of your I-94, the receipt for the processing fee and a copy of the letter from your employer that you presented to gain admission as a TN.

If you have any questions concerning your status or admission, you may contact the United States Immigration & Naturalization Service at _____, telephone _____.

SECTION SIX

Mexican TN Nonimmigrant pursuant to NAFTA

Mexican TN Nonimmigrant pursuant to NAFTA

The NAFTA professional is unique to the North American Free Trade Agreement (the NAFTA). The classification is not found in general immigration provisions in section 101(a)(15) of the INA; rather, it is included in section 214(e) of the INA. Under NAFTA, a Canadian or Mexican citizen who seeks temporary entry into the United States as a professional may be admitted to the United States under the provisions of the NAFTA as a TN (for Trade NAFTA). The TN is limited to Canadian or Mexican professionals employed on a professional level. A professional is defined as a business person seeking entry to engage in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, if the business person otherwise qualifies under existing, general immigration requirements for temporary entry into the United States.

The NAFTA professional is modeled on the professional category in the predecessor trade pact, the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989 until the entry into force of the NAFTA on January 1, 1994. The provisions differ slightly for Canadian citizen applicants and Mexican citizen applicants. Presently, the number of Mexican citizens entering the United States as TN professionals under NAFTA is limited to 5,500. There is no numerical limitation on the number of Canadian citizen TN professionals.

As with the CFTA, admission as a TN under section 214(e) of the INA does not imply that the citizen of Canada or Mexico would otherwise qualify as a professional under sections 101(a)(15)(H)(i)(b) or 203(b)(3) of the INA. Note too that Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed. Section D of Annex 1603 is limited to the entry of a citizen of a Party country seeking to render professional-level services for an entity in another Party country.

Self-employment also clearly conflicts with the intent of the NAFTA Implementation Act and its accompanying Statement of Administrative Action, which states, at page 178, “Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed.” In this regard, Section B of Annex 1603, which deals with “traders and investors,” establishes the appropriate category of temporary entry for a citizen of a Party country seeking to develop and direct investment operations in another Party country. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the United States, therefore, must seek classification under section 101(a)(15)(E) of the INA.

Although the issue of self-employment was never specifically addressed under the regulations promulgated by the INS pursuant to the CFTA Implementation Act, the bar on establishment of a business or practice in which the professional will be self- employed is consistent with the intent of the United States and Canada in entering into the CFTA. Since entry into NAFTA was not intended to substantively change the treatment of professionals, this explicit bar merely clarifies existing law.

Note that the bar on establishment of a business or practice in which the Canadian or Mexican citizen will be self-employed is in no way intended to preclude a Canadian or Mexican citizen who is self-employed abroad from seeking entry to the United States pursuant to a pre-arranged agreement with an enterprise owned by a person or entity other than him/herself located in the United States. On the other hand, a Canadian or Mexican citizen is precluded from entering this country in TN classification for the purpose of rendering pre-arranged services for a U.S. corporation or entity of which he or she is the sole or controlling shareholder or owner or over which he or she holds de facto control.

Pre-arranged Professional Services. In order to obtain “TN” classification, a businessperson, including one who is self-employed, must be seeking entry to render pre-arranged professional services to an individual or an enterprise. If the business activities are to be rendered to an individual or an enterprise, the enterprise must be substantively separate from the businessperson seeking entry. Moreover, the business activities must not include establishment of a business or practice or any other type of activity in which the businessperson will be self-employed in the United States.

As used above, to constitute pre-arranged professional services, there must exist a formal arrangement to render professional service to an individual or an enterprise in the United States. The formal arrangement may be through an employee-employer relationship or through a signed contract between the businessperson or the businessperson’s employer and an individual or an enterprise in the United States.

Enterprise for Which the Professional Activities are to be Performed in the United States. The enterprise in the United States for which the business activities are to be performed can take any legal form (as defined in Article 201 of the NAFTA), that is, "any entity entirely constituted or organized under applicable law, whether or not for profit, and whether privately- owned or government-owned, including any corporation, trust partnership, sole proprietorship, joint venture or other association."

Substantively Separate from the Business Person Seeking Entry as NAFTA Professional. A businessperson is ineligible for classification as a NAFTA Professional if the enterprise in the United States offering a contract or employment to the businessperson seeking entry is a sole proprietorship operated by that businessperson. Moreover, even if the receiving enterprise is legally distinct from the businessperson, such as a corporation having a separate legal existence, entry as a NAFTA Professional must be refused if the receiving enterprise is substantially controlled by that businessperson.

Substantial Control. Whether the businessperson "substantially controls" the U.S. enterprise will depend on the specific facts of each case. The following factors, among others, are relevant in determining what constitutes substantial control:

- whether the applicant has established the receiving enterprise;
- whether, as a matter of fact, the applicant has sole or primary control of the U.S. enterprise (regardless of the applicant's actual percentage of share ownership);
- whether the applicant is the sole or primary owner of the business; or
- whether the applicant is the sole or primary recipient of income of the business.

(F) **Establishment of a Business** in Which the Professional Will be Self-Employed in the United States. The following factors, among others are relevant in determining whether the business person will be self-employed in the United States:

- incorporation of a company in which the business person will be self-employed;
- initiation of communications (e.g., by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in the United States; or
- responding to advertisements for the purpose of obtaining employment or entering into contracts.

On the other hand, the following activities do not constitute the establishment of a business in which the business person will be self-employed in the United States:

- responding to unsolicited inquiries about service(s) which the professional may be able to perform; or
- establishing business premises from which to deliver pre-arranged service to clients.

(2) **Appendix 1603.D.1 to Annex 1603 of the NAFTA**. Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6(c). A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified. In the case of a Canadian or Mexican citizen whose occupation does not appear on Appendix 1603.D.1 or who does not meet the transparent criteria specified, nothing precludes the filing of a petition for classification under another existing nonimmigrant classification.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for an U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a businessperson to conduct seminars that do not constitute the performance of prearranged activities for an U.S. entity.

The terms "**state/provincial license**" and "**state/provincial/federal license**" means any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

A **"Post Secondary Diploma**" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States. A "Post Secondary Certificate" means a certificate issued, on completion of two or more years of post secondary

education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

The following notes relate to NAFTA TN admissions in specific occupations:

(A) A business person in the category of **"Scientific Technician/ Technologist"** must be seeking temporary entry for work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics. These occupations do not ordinarily require a baccalaureate. Supporting documents could be an attestation from the prospective U.S. employer or the Canadian employer, or other documents establishing the individual possesses the skills set forth in Appendix 1603.D.1.

(B) A business person in the category of **"Medical Laboratory Technologist (Canada) /Medical Technologist (Mexico and the United States)"** must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

(C) Foreign medical school graduates seeking temporary entry in the category of **"Physician (teaching or research only)"** may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) **Registered nurses** must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Registered nurses holding temporary state licenses or other temporary state authorization shall not be required to show they have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS). Admission of nurses should not be limited to the expiration date of either document.

(E) **Sylviculturists and foresters** plan and supervise the growing, protection, and harvesting of trees. Range managers manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate or Licenciatura degree in forestry or a related field or a state/provincial license is the minimum entry requirement for these occupations.

F) **Disaster relief insurance claims adjusters** must submit documentation that there is a declared disaster event by the President of the United States, or a state statute, or a local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or, if property damage exceeds $5 million and represents a significant number of claims, by an association of insurance companies representing at least 15 percent of the property casualty market in the U.S.

G) **Management consultants** provide services that are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They may be salaried employees of the U.S. entities to which they are providing services only when they are not assuming existing positions or filling newly created positions. As a salaried employee of such a U.S. entity, they may only fill supernumerary temporary positions. On the other hand, if the employer is an U.S. management-consulting firm, the employee may be coming temporarily to fill a permanent position. Canadian or Mexican citizens may qualify as management consultants by holding a Baccalaureate or Licenciatura degree or by having five years of experience in a specialty related to the consulting agreement.

(H) The **computer systems analyst** category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems that meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers.

(I) **Hotel Managers** must possess a Baccalaureate or Licenciatura degree in hotel/restaurant management. A post-secondary diploma in hotel/restaurant management plus 3 years of experience in the field will also qualify.

(J) **Animal and Plant Breeders** breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a Baccalaureate or Licenciatura degree.

(3) **Qualifications**. The NAFTA professional must meet the following general criteria:

- Be a citizen of a NAFTA country (Canada or Mexico).

- Be engaged in professional-level activities for an entity in the United States. Only those professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian or Mexican citizens seeking to set up a business in the United States in which he or she will be self-employed.

- Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.

- Meet applicable license requirements. To practice a licensed profession, Canadian and Mexican entrants must meet all applicable requirements of the state in which they intend to practice.

- Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

Application Process

Citizens of Mexico. A citizen of Mexico may apply for entry to the U.S. as a NAFTA professional at major land border ports-of-entry, airports handling international flights, or at the airports in Canada where the Service has established a pre-clearance/pre-flight station. However, a citizen of Mexico must be in possession of a TN nonimmigrant visa issued by an American Consulate and present a valid Mexican passport.

Citizens of Mexico seeking classification as a TN must do so on the basis of a petition filed by the U.S. employer. Before filing the petition, the employer must meet the labor application requirement of section 212(n) of the Act.

Each prospective U.S. employer must file the petition on Form I-129, Petition for Nonimmigrant Worker, with the Nebraska Service Center, even in emergent circumstances, with the following:

- Evidence that the applicant is a citizen of Mexico;

- Evidence that the employer has filed with the Secretary of Labor Form ETA 9035 to show that the petitioner has met the labor condition application requirement of section 212(n) of the Act;

- A statement of the activity listed in Appendix 1603.D.1 in which the beneficiary will be engaging, a full description of the nature of the duties the beneficiary will be performing, the anticipated length of stay, and the arrangements for remuneration;

- Evidence that the applicant meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1; and

- Evidence that all applicable state or local licensure requirements have been satisfied.

The Service will provide the U.S. employer with a written decision approving or denying the petition. The applicant must then present the approval notice to the consular official when applying for a TN visa. There is a fee to apply for a TN visa. A petition classifying a citizen of Mexico as a TN professional may be approved for up to 1 year. In the case of a petition denial, full appeal rights through the Administrative Appeals Unit are available to the petitioner.

Terms of Initial Admission

Mexicans. A Mexican citizen seeking admission in TN classification is required to present a valid TN visa issued by an American Consulate. In addition to the visa requirement, the Mexican citizen must present at the time of application for initial admission a copy of the employer's statement regarding the nature of the applicant's duties in the United States.

Admit a Mexican TN for the validity period of the approved petition and issue a multiple entry Form I-94 showing admission classification as TN. Annotate the occupation in block #18 on the back of the arrival portion of the I-94. (It is very important to capture occupation information. INS has the obligation under NAFTA Article 1604.2 to share data specific to each occupation, profession or activity, with Canada and Mexico.)

(Note that only citizens of Canada pay the TN application fee at the port-of-entry. This fee is not charged to Mexican citizens when applying for TN classification at the port-of-entry because fees are charged for filing the I-129 petition and for issuance of the TN nonimmigrant visa.)

At the time application for admission, the citizen of Mexico will be subject to inspection to determine the applicability of section 214(b) of the Act (presumption of immigrant intent) to the applicant.

Procedures for Readmission

The citizen of Mexico who is in possession of a valid Form I-94 may be readmitted for the remainder of the time authorized provided that the original intended professional activities and employer(s) have not changed and should retain possession of that original Form I-94. If no longer in possession of a valid Form I-94 (e.g. a citizen of Mexico seeking readmission upon return from a trip to Europe), the Mexican citizen may be readmitted upon presentation of a valid TN visa and evidence of prior admission. Evidence of prior admission may include, but is

not limited to, an INS fee receipt from a prior entry or an admission stamp in the applicant's passport. Upon readmission, a new I-94 shall be issued bearing the legend "multiple entry."

Extension of stay

A citizen of Mexico seeking an extension of stay in the U.S. in TN status also must be petitioned for on Form I-129 at the Nebraska Service Center. Documentary requirements include evidence that Department of Labor certification requirements continue to be met by the employer. Provision is included for consular notification should the applicant leave the U.S. during the pendency of the application. A petition extension and extension of the applicant's stay may be granted for up to 1 year.

Limitations. At the present time, there is no specified upper limit on the number of years a citizen of Mexico may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications. However, section 214(b) of the Act is applicable to citizens of Mexico who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of this statutory provision.

Except as limited by section 248 of the Act, a citizen of Mexico who is currently in the U.S. in another valid classification is not precluded from requesting a change of status to TN. If such applicant is in the U.S. as an H-1 or L-1, he or she may be changed to TN status if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian J nonimmigrant who is subject to the 2-year foreign residence requirement may not change to TN classification, but may leave the U.S. and seek readmission as a TN.

Request for change/additions of U.S. employers. A Mexican citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Northern Service Center. All documentary requirements pertaining to a citizen of Mexico outlined above must be met. Employment with a different or with an additional employer is not authorized prior to INS approval of the petition.

No action is required by a Mexican citizen who is transferred to another location by the U.S. employer to perform the same services. An example of such an acceptable transfer would be to a branch or office of the employer. If the transfer is to a separately incorporated subsidiary or affiliate, Form I-129 must be filed.

Spouse and unmarried minor children

The spouse and unmarried minor children who are accompanying or following to join a TN professional, if otherwise admissible, are to be accorded TD (Trade Dependent) classification. These are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1. (Those persons who are normally exempt from nonimmigrant visa requirements include citizens of Canada and Landed Immigrants of Canada having a common nationality with Canadian citizens).

There is no requirement that the TD dependent be a citizen of Canada or Mexico.
No fee is required for admission of dependents in TD status (except the fee for the I-94) and they are to be issued multiple entry Forms I-94.
A TD spouse or child is not authorized to accept employment while in the U.S. in such status. Dependents in TD status may attend school in the U.S. on a full-time basis as such attendance is deemed incident to status.

SECTION SEVEN

ENTRY OF NONIMMIGRANT WORKERS DURING LABOR DISPUTES

ENTRY OF NONIMMIGRANT WORKERS DURING LABOR DISPUTES

INA 214(j) Not withstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout. Notice of a determination under this subsection shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this subsection, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

INSPECTORS FIELD MANUAL
15.10 Entry of Nonimmigrant Workers during Labor Disputes.

(a) **General**. There are specific regulations governing the admission of nonimmigrant alien workers entering during strikes and lockouts involving their employers. In general, an alien who has not yet entered the U.S. under an approved I-129 petition or who has not yet entered as a D, E, or TN, is inadmissible once the Secretary of Labor has certified to the Attorney General that a strike is in progress. An alien who has already commenced employment may participate in a strike (if not engaging in unlawful conduct) without jeopardizing his or her status [Specific regulations governing admission of nonimmigrants during strikes are contained in relevant subsections of 8 CFR 214.2].

(b) **Labor Disputes Involving NAFTA Nonimmigrants**. Article 1603(2) of NAFTA establishes a safeguard for the domestic labor force in each NAFTA country. This provision permits each party to NAFTA to refuse issuance of an immigration document to a NAFTA business person whose temporary entry may affect adversely the settlement of any labor dispute in progress at the place or intended place of employment, or if temporary entry would affect adversely the employment of any person involved in such dispute. This provision may also be invoked with respect to a NAFTA business person seeking entry as a treaty trader, treaty investor, intracompany transferee, or professional, whose activities in the U.S. require an employment authorization. If a petition has already been approved, but the alien has not yet entered the U.S., or has entered the U.S. but not yet started employment, the approval of the petition may be revoked [See §214(j) of the Act, and 8 CFR 214.2(e), (l), and 214.6].

Only if the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress can adverse action (admission in a NAFTA category or approval of a petition) under this provision be initiated.

After the inspecting official determines if the temporary entry of the applicant may adversely affect the settlement of any labor dispute or the employment of any person who is involved in such a dispute, the applicant must be advised in writing of the reason(s) for the refusal. This can be the routine INS notice of refusal at the port-of-entry.

In addition, written notification must be provided to the NAFTA country of which the business person is a citizen. The following steps should be taken at the port-of-entry or service center:

Notify Headquarters Adjudications, Business and Trade Services Branch, in writing (fax to (202) 514-0198) of the refusal. Include the following information:

- Name and address, if known, of the business person;
- Citizenship of the business person;
- Date and place of refusal of document authorizing employment (I-94);
- Name and address of prospective employer;
- Position to be occupied;

- Requested duration of stay;

- Reasons for refusal;

- Reference specific statutory or regulatory authority for refusal (if applicable); and

- Statement indicating that the business person was informed in writing of the refusal and the reasons for the refusal.

Headquarters will notify the appropriate government officials whose citizen was refused an employment authorization document pursuant to this NAFTA provision.

Where a principal alien is refused classification under NAFTA, the dependent family members are not classifiable as dependents.

SECTION EIGHT

NAFTA IMPLEMENTATION CABLES

HQ 1815-C. **THIS IS NAFTA IMPLEMENTATION CABLE 001**

CONGRESS PASSED THE IMPLEMENTING LEGISLATION FOR THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA). CHAPTER 16 OF THE AGREEMENT ADDRESSES THE MOVEMENT OF BUSINESS PERSONS AMONG CANADA, MEXICO, AND THE UNITED STATES. WHILE THE PRESIDENT HAS NOT YET SIGNED THE ENROLLED BILL, THE EFFECTIVE IMPLEMENTATION DATE OF THE AGREEMENT IS STILL PROJECTED TO BE JANUARY 1, 1994.

AS IN THE U.S. -CANADA FTA, CHAPTER 16 OF THE NAFTA AGREEMENT COVERS EXCLUSIVELY FOUR NONIMMIGRANT CLASSIFICATIONS: B-1, TEMPORARY VISITORS FOR BUSINESS; E, TREATY TRADER AND INVESTOR; L, INTRACOMPANY TRANSFEREE; AND THE PROFESSIONAL BUSINESSPERSON. CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT IS CONSISTENT WITH EXISTING SECTION 101(A)(15)(B) OF THE IMMIGRATION AND NATIONALITY ACT AS AMENDED. WHILE CANADIAN CITIZENS WILL CONTINUE TO BENEFIT FROM THE EXEMPTION TO VISA ISSUANCE, MEXICAN CITIZENS WILL STILL BE REQUIRED TO OBTAIN A VALID B-1 VISA OR A BORDER CROSSING-CARD.

E VISA CLASSIFICATION. TRADERS AND INVESTORS: THE NORTH AMERICAN FREE TRADE AGREEMENT EXTENDS THE PRIVILEGE OF THE E VISA CLASSIFICATION UNDER 101(A) (15) (E) TO CITIZENS OF MEXICO AND CANADA. TITLE 8, CODE OF FEDERAL REGULATIONS PART 212.1(L) WILL BE MODIFIED TO REFLECT THAT AN ALIEN SEEKING ADMISSION AS A TREATY TRADER OR INVESTOR UNDER THE PROVISIONS OF CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) PURSUANT TO SECTION 101 (A) (15) (E) OF THE ACT, SHALL BE IN POSSESSION OF A NONIMMIGRANT VISA ISSUED BY AN AMERICAN CONSULAR OFFICER CLASSIFYING THE ALIEN UNDER THAT SECTION.

THE TREATMENT OF WOULD-BE L-1 APPLICANTS WILL REMAIN VIRTUALLY THE SAME AS CURRENT PRACTICE, MEANING THAT THE PETITION REQUIREMENT AND RELATED REQUIREMENTS REMAIN AND THAT MEXICAN CITIZENS WILL CONTINUE TO NEED VISAS IN ORDER TO ENTER THE UNITED STATES. SOME PROCEDURAL CHANGES REGARDING TITLE 8, CODE OF FEDERAL REGULATIONS PART 214.2(L)(17) ARE BEING CONTEMPLATED REGARDING THE FILING OF INDIVIDUAL PETITIONS BY CANADIAN CITIZENS AT CLASS A PORTS OF ENTRY.

THERE ARE MULTIPLE CHANGES FROM CURRENT PRACTICE IN THE TREATMENT OF PROFESSIONAL PERSONS UNDER THE AGREEMENT. THE IMPLEMENTING LEGISLATION PROVIDES THAT THIS ADMISSION CLASS IS CONSIDERED TO BE A REGULAR ADMISSION CLASS UNDER SECTION 101 (A) (15) INA.

SCHEDULE 2 OF THE CANADIAN FREE TRADE AGREEMENT HAS BEEN INCORPORATED INTO THE NAFTA AGREEMENT AND IS SET FORTH IN APPENDIX 1603.D.l. THE IMPLEMENTING LEGISLATION NOW PROVIDES FOR DERIVATIVES AND THUS DEPENDENTS WILL NOT HAVE TO SEEK B-2 STATUS.THERE WILL BE A NEW NONIMMIGRANT CLASSIFICATION SOLELY ADDRESSING THE DEPENDENTS OF PROFESSIONALS.

WHILE NO CURRENT LIMITATION EXISTS OR IS PROPOSED FOR CANADIAN CITIZENS ENTERING AS PROFESSIONALS, THERE IS AN ANNUAL CEILING OF FIVE THOUSAND FIVE HUNDRED (5,500) PROVIDED FOR MEXICAN CITIZENS SEEKING ADMISSION AS PROFESSIONALS UNDER THE NAFTA AGREEMENT DURING THE FIRST YEAR OF THE AGREEMENT. MEXICAN CITIZENS SEEKING STATUS AS PROFESSIONALS WILL BE GOVERNED BY SIMILAR PROCEDURAL REQUIREMENTS As H-1A AND H-1B NONIMMIGRANTS.THIS MEANS THAT PRIOR TO SEEKING ENTRY,THE MEXICAN CITIZEN WILL NOT ONLY HAVE TO OBTAIN A VALID NONIMMIGRANT VISA CLASSIFYING SAID MEXICAN CITIZEN AS A PROFESSIONAL PERSON BUT ALSO THE UNITED STATES EMPLOYER WILL HAVE TO OBTAIN A LABOR CONDITION STATEMENT AND THEN SUBMIT A FORM I-129 TO THE APPROPRIATE SERVICE CENTER REQUESTING THAT THE PERSON BE CLASSIFIED AS A PROFESSIONAL FOR THE PURPOSES OF OBTAINING A NONIMMIGRANT VISA. THUS, UNLIKE THE TREATMENT OF CANADIAN PROFESSIONALS, THERE WILL BE NO FEE COLLECTED FROM MEXICAN PROFESSIONALS AT THE TIME OF THEIR APPLICATION FOR ADMISSION.

OTHER CHANGES PROVIDED FOR ADDRESS THE QUESTION OF THE ADMISSION OF TREATY TRADERS AND INVESTORS, INTRACOMPANY TRANSFEREES**,** AND PROFESSIONAL PERSONS DURING THE PERIOD THAT THERE IS A STRIKE OR OTHER LABOR DISPUTE IN PROCESS AND OTHER PROVISIONS RELATING TO THE PROVISION OF INFORMATION, PUBLIC NOTICES, AND DISPUTE SETTLEMENT. IF THE APPLICANT SEEKING STATUS AS A TREATY TRADER OR INVESTOR, INTRACOMPANY TRANSFEREE, OR PROFESSIONAL PERSON IS DENIED ENTRY BECAUSE OF THIS PROVISION RELATING TO STRIKES OR OTHER LABOR DIFFICULTIES, THE PERSON AFFECTED MUST BE INFORMED OF THE REASONS FOR THE REFUSAL, AND A COPY OF THE REFUSAL MUST BE FORWARDED TO THE TRADE REPRESENTATIVE. DETAILED POLICY REGARDING THE ENTIRE NAFTA IMPLEMENTATION WILL BE FORTHCOMING AS WILL TRAINING PACKAGES FOR FIELD OFFICES AND RELEASES FOR PUBLIC INFORMATION AND ASK IMMIGRATION. QUESTIONS SHOULD BE ADDRESSED TO HQADN/NONIMMIGRANT BRANCH.CHAPTER 16 WILL BE PROVIDED UNDER SEPARATE COVER.

HQ 1815-C. **THIS IS NAFTA IMPLEMENTATION CABLE 002**.

ON DECEMBER 8, 1993, THE PRESIDENT SIGNED THE NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT. ON JANUARY 1, 1994, THE UNITED STATES-CANADA FREE TRADE AGREEMENT WILL BE SUBSUMED INTO THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA). CHAPTER 16 OF THE AGREEMENT ADDRESSES THE MOVEMENT OF BUSINESS PERSONS AMONG CANADA, MEXICO, AND THE UNITED STATES.

GENERAL NAFTA INFORMATION:
IN ORDER TO COMPLY WITH ARTICLE 1604 OF THE NORTH AMERICAN FREETRADE AGREEMENT REGARDING THE DISSEMINATION OF INFORMATION, REVISED AND EXPANDED. FORM M-316 IS BEING NAFTA-RELATED INFORMATION IS BEING PREPARED FOR THE ASK IMMIGRATION SYSTEM. OTHER AGENCIES HAVE EITHER PREPARED MATERIALS OR, WILL BE PREPARING MATERIALS, PAMPHLETS AVAILABLE NOW FROM OTHER AGENCIES ARE CUSTOMS PUBLICATION NO.571 ENTITLED THE NORTH AMERICAN FREE TRADE AGREEMENT: A GUIDE TO CUSTOMS PROCEDURES AVAILABLE THROUGH THE GOVERNMENT PRINTING OFFICE AT $3.50 PER COPY, AND A BROCHURE ENTITLED EXPORTS MEXICO AVAILABLE THROUGH THE DEPARTMENT OF COMMERCE. THERE ARE VARIOUS TELEPHONE NUMBERS THAT AN.INQUIRER MAY CONTACT FOR INFORMATION FROM VARIOUS AGENCIES INVOLVED IN THE IMPLEMENTATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT. THE DEPARTMENT OF AGRICULTURE HAS A TELEPHONE NUMBER THAT AN INQUIRER MAY CALL FOR INFORMATION REGARDING GENERAL INFORMATION AND SIDE AGREEMENTS ON AGRICULTURE - (202) 720-1336. THE UNITED STATES CUSTOMS SERVICE HAS QUOTE FLASH FACTS UNQUOTE TELEPHONE NUMBER FOR INFORMATION REGARDING THE TARIFF SCHEDULE- (202) 927-1692, AND A HELP DESK NUMBER FOR IMPORTANT INFORMATION - (202) 927-0066. THE COMMERCE DEPARTMENT HAS THREE NUMBERS TO BE CONTACTED DEPENDING ON THE NATURE OF THE INFORMATION REQUESTED, 1-800-USATRADE, HOW TO EXPORT TO MEXICO; (202) 482-4464, A QUOTE MEXICO FLASH FACTS TELEPHONE NUMBER; AND (202) 482-3101, A QUOTE CANADA FLASH FACTS TELEPHONE NUMBER. VARIOUS PAMPHLETS ARE ALSO BEING PREPARED FOR DISTRIBUTION. SERVICE OFFICES RECEIVING INQUIRIES REGARDING OTHER PROVISIONS OUTSIDE OF CHAPTER 16 SHOULD DIRECT THE INQUIRIER TO THE APPROPRIATE AGENCY AND INFORMATION.

NAFTA PROFESSIONALS

THE IMPLEMENTING LEGISLATION FOR CHAPTER 16 OF THE AGREEMENT PROVIDES FOR THE ADMISSION OF CITIZENS OF CANADA AND MEXICO AS PROFESSIONALS AS UNDER SECTION 101 (A) (15) OF THE IMMIGRATION AND NATIONALITY ACT. THE DESIGNATION APPROVED TO DENOTE THIS NEW CLASS OF ADMISSION IS QUOTE TN UNQUOTE FOR TRADE NAFTA. EFFECTIVE JANUARY 1, 1994, ANY CANADIAN CITIZEN ADMITTED AS A NAFTA PROFESSIONAL AT ANY PORT OF ENTRY IS TO BE ASSIGNED THIS CLASSIFICATION. A CITIZEN OF MEXICO WILL REQUIRE THE ISSUANCE OF A NONIMMIGRANT VISA CLASSIFYING SAID MEXICAN CITIZEN AS A TN. EACH NONIMMIGRANT ALIEN FROM CANADA OR MEXICO ADMITTED AS A TN WILL REQUIRE A COMPLETELY EXECUTED FORM 1-94 WHICH MUST BE ENDORSED TO SHOW THE DATE AND PLACE OF ADMISSI0N AND THE PERIOD OF ADMISSION. ON THE BACK OF THE FORM I-94, BLOCK 18 RELATING TO OCCUPATION MUST BE COMPLETED AND THE NAME OF THE EMPLOYER MUST BE NOTATED ON THE REVERSE OF BOTH THE ARRIVAL AND DEPARTURE FORMS I-94, AND THE FORM 1-94 MUST BE ENDORSED TO SHOW "MULTIPLE ENTRY." TITLE 8, CODE OF FEDERAL REGULATIONS PART 235.1(F) IS BEING REVISED TO REQUIRE THE ADDITIONAL INFORMATION IN ORDER THAT THE SERVICE COMPLY WITH THE REPORTING REQUIREMENTS OF THE AGREEMENT.

A CANADIAN CITIZEN PREVIOUSLY ADMITTED AS A QUOTE TC UNQUOTE PROFESSIONAL UNDER THE PROVISIONS OF THE UNITED STATES-CANADA FREE TRADE AGREEMENT WHOSE AUTHORIZED PERIOD OF ADMISSION HAS NOT EXPIRED AND WHO IS CONTINUING TO MAINTAIN VALID NONIMMIGRANT STATUS MAY REMAIN IN TIHE UNITED STATES UNTIL THE AUTHORIZED PERIOD OF ADMISSION EXPIRES AND THEREAFTER MAY SEEK STATUS AS TN, THROUGH A REQUEST FOR READMISSION OR A REQUEST FOR EXTENSION OF STAY. THE DEPENDENTS OF THE CANADIAN CITIZEN MAY ALSO REMAIN SO LONG AS THE PRINCIPAL ALIEN REMAINS IN VALID STATUS.

REQUEST FOR EXTENSION

AT THE TIME THE PRINCIPAL ALIEN SUBMITS THE REQUEST ON FORM I-129 FOR STATUS AS A TN, THE DEPENDENTS WILL NEED TO SUBMIT THEIR OWN FORM 1-539 TO BE CLASSIFIED AS THE DEPENDENTS OF A NAFTA PROFESSIONAL.

REQUEST FOR READMISSION

THERE IS NO REQUIREMENT THAT THE CANADIAN PROFESSIONAL DEPART FROM THE UNITED STATES BUT SHOULD THE PROFESSIONAL DEPART, IT WOULD BE POSSIBLE FOR SAID PERSON TO BE GRANTED TN STATUS ON A NEW APPLICATION FOR ADMISSION.

MEXICAN CITIZENS AND THE NAFTA AGREEMENT

A CITIZEN OF MEXICO WILL REQUIRE A VALID, UNEXPIRED NONIMMIGRANT VISA FOR EACH NONIMMIGRANT CATEGORY PROVIDED FOR UNDER THE AUSPICES OF CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT. THE UNITED STATES EMPLOYER OF A PROSPECTIVE MEXICAN PROFESSIONAL WILL FIRST NEED TO OBTAIN THE APPROPRIATE LABOR ATTESTATION IF THE POSITION IS FOR THAT OF A REGISTERED NURSE OR LABOR CONDITION APPLICATION IF THE POSITION IS FOR ANY OTHER SPECIALTY OCCUPATION AND THEN SUBMIT FORM 1-129 TO THE DESIGNATED SERVICE CENTER. THE SERVICE CENTER WILL NOTIFY THE PETITIONER OF THE APPROVAL OF THE PETITION ON FORM I-797. ANNEX 1603 TO CHAPTER 16 OF THE NAFTA AGREEMENT PROVIDES FOR A LIMITATION OF 5,500 MEXICAN CITIZENS WHO MAY BE ADMITTED TO THE UNITED STATES AS NAFTA PROFESSIONALS. FOR PURPOSES OF THIS 5,500 CEILING, THE SERVICE CENTERS WILL COUNT THE NUMBER OF INITIAL PETITIONS FILED IN BEHALF OF MEXICAN TN PROFESSIONALS.PETITIONS FOR EXTENSION, CHANGE/ADDITION OF EMPLOYERS, AND AMENDED PETITIONS WILL NOT BE COUNTED FOR THIS PURPOSE.

ADDITIONAL NAFTA IMPLEMENTATION INFORMATION WILL BE FORTHCOMING. QUESTIONS MAY BE DIRECTED TO HQ ADJUDICATIONS, NONIMMIGRANT BRANCH.

HQ 1815-C. **THIS IS NAFTA IMPLEMENTATION CABLE 003.**

PUBLIC LAW 103-182 IMPLEMENTS THE NORTH AMERICAN FREE TRADE AGREEMENT, WHICH WILL BECOME EFFECTIVE ON J ANUARY 1, 1994. UNDER CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA), AN IMPORTANT SAFEGUARD FOR THE DOMESTIC LABOR FORCE WAS PROVIDED WHICH PERMITS EACH NAFTA COUNTRY TO REFUSE TO ISSUE AN IMMIGRATION DOCUMENT AUTHORIZING EMPLOYMENT WHERE THE TEMPORARY ENTRY OF A BUSINESS PERSON MIGHT AFFECT ADVERSELY THE SETTLEMENT OF A LABOR DISPUTE OR THE EMPLOYMENT OF A PERSON INVOLVED IN SUCH A DISPUTE ARTICLE 1603(2) THUS SPECIFICALLY ALLOWS THE UNITED STATES TO DENY TEMPORARY ENTRY TO A NAFTA INTRACOMPANY TRANSFEREE (L-1), TRADER OR INVESTOR (E-1 OR E-2), OR PROFESSIONAL (TN), WHOSE ACTIVITIES IN THE UNITED STATES REQUIRE EMPLOYMENT AUTHORIZATION, IF ADMISSION MIGHT INTERFERE WITH AN ONGOING LABOR DISPUTE. NAFTA FURTHER PROVIDES THAT IF ARTICLE 1603(2) IS INVOKED, THE BUSINESS PERSON MUST BE INFORMED IN WRITING OF THE REASON FOR THE REFUSAL, AND THE COUNTRY WHOSE BUSINESS PERSON IS AFFECTED MUST BE NOTIFIED. PENDING A REVISION OF THE OPERATIONS INSTRUCTIONS, THE VEHICLE TO BE USED FOR NOTIFYING THE BUSINESS PERSON WILL BE FORM I-160A ON THE NORTHERN BORDER, AND FORM I-180 ON THE SOUTHERN BORDER. A COPY OF THE COMPLETED FORMS I-160A OR I-180 WILL BE FAXED TO HEADQUARTERS, EXAMINATIONS BRANCH, ATTENTION: JACQUELYN BEDNARZ, CHIEF, NONIMMIGRANT BRANCH, WHO WILL TAKE ACTION TO NOTIFY
THE APPROPRIATE COUNTRY. HEADQUARTERS WILL NOTIFY ALL FIELD OFFICES BY CABLE OF ANY INSTANCE IN WHICH THE SECRETARY OF LABOR CERTIFIES TO THE COMMISSIONER THAT THERE IS A STRIKE OR OTHER LABOR DISPUTE INVOLVING A WORK STOPPAGE WHERE THE ENTRY OF A NAFTA E, L, OR, OR TN MAY HAVE AN ADVERSE EFFECT.

HQ 1815-C**. THIS IS NAFTA IMPLEMENTATION CABLE 004.**

THE NORTH AMERICAN FREE TRADE AGREEMENT WILL BECOME EFFECTIVE ON JANUARY 1, 1994. CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT ADDRESSES THE TEMPORARY ENTRY OF BUSINESS PERSONS. UNDER NAFTA, BOTH A MEXICAN CITIZEN AND A CANADIAN CITIZEN MAY SEEK ADMISSION AS PROFESSIONAL PERSONS. THE CLASSIFICATION SYMBOL "TN" (TRADE NAFTA) HAS BEEN DESIGNATED FOR THIS NAFTA TEMPORARY ENTRY CATEGORY. A CANADIAN CITIZEN MAY SUBMIT AN APPLICATION FOR STATUS AS A "TN" UNQUOTE AT A CLASS A PORT OF ENTRY. A MEXICAN CITIZEN MUST FIRST SECURE AN APPROVED PETITION SUPPORTED BY THE REQUIRED LABOR ATTESTATION OR LABOR CONDITION STATEMENT AND THEN MUST OBTAIN A VALID NONIMMIGRANT VISA ACCORDING STATUS AS A "TN" THE PETITION ON BEHALF OF THE MEXICAN CITIZEN MUST BE FILED WITH THE NORTHERN SERVICE CENTER IN LINCOLN, NEBRASKA. UNDER NAFTA, A MEXICAN CITIZEN AND A CANADIAN CITIZEN MAY ALSO REQUEST A CHANGE OF NONIMMIGRANT STATUS TO THAT OF "TN". IF THE MEXICAN OR CANADIAN CITIZEN ARE IN STATUS IN ANOTHER NONIMMIGRANT CLASSIFICATION, A FORM I-129 MAY BE FORWARDED TO THE NORTHERN SERVICE CENTER IN LINCOLN, NEBRASKA REQUESTING THAT A CHANGE OF NONIMMIGRANT STATUS BE GRANTED. ANY REQUESTS FOR EXTENSION OF "TN" STATUS MUST ALSO BE SUBMITTED TO THE NORTHERN SERVICE CENTER IN LINCOLN, NEBRASKA. ANY INQUIRER SEEKING INFORMATION REGARDING WHERE TO SUBMIT THE REQUEST FOR STATUS AS A PROFESSIONAL SHOULD BE DIRECTED TO FILE WITH THE NORTHERN SERVICE CENTER. ADDITIONAL INSTRUCTIONS TO THE FORM I-129 HAVE BEEN SENT TO THE OFFICE OF MANAGEMENT AND BUDGET (OMB) FOR CLEARANCE FOR PUBLIC USE. THESE ADDITIONAL INSTRUCTIONS ADDRESS THE USE OF THE FORM FOR NAFTA CATEGORIES OF TEMPORARY ENTRY. THEY WILL BE PRINTED AND AVAILABLE TO THE PUBLIC SHORTLY.

HQ 1815-P. **THIS IS NAFTA IMPLEMENTATION CABLE 005.**

THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) WILL BECOME EFFECTIVE ON JANUARY 1, 1994. CHAPTER 16 OF THE TEMPORARY ENTRY OF BUSINESS PERSONS. REGULATIONS AND OPERATIONS INSTRUCTIONS AND INSTRUCTIONS TO FORMS 1-539 AND FORM 1-129 ARE BEING REVISED TO PROVIDE INSTRUCTIONS AND PROCEDURES TO BE FOLLOWED IN IMPLEMENTING THE PROVISIONS OF CHAPTER 16 AND THE NAFTA IMPLEMENTATION ACT. PENDING PROMULGATION OF THE REGULATIONS AND RECEIPT OF THOSE INSTRUCTIONS, THIS IS TO SERVE AS A POLICY TO BE ADHERED TO BY ALL SERVICE PERSONNEL IN IMPLEMENTING NAFTA.

A COPY OF CHAPTER 16 WAS SENT TO ALL FIELD OFFICES UNDER SEPARATE COVER, DATED DECEMBER 8, 1993.CHAPTER 16 COVERS FOUR CATEGORIES OF TEMPORARY ENTRY: THE BUSINESS VISITOR, B-1; THE TRADER AND INVESTOR, E-1 AND E-2; THE INTRACOMPANY TRANSFEREE, L-1; AND THE NAFTA PROFESSIONAL, TN. VISITORS FOR BUSINESS, B-1: CHAPTER 16, ANNEX, 1603 OF THE NAFTA PROVIDES FOR THE ADMISSION OF CITIZENS OF CANADA OR MEXICO AS VISITORS FOR BUSINESS. THERE ARE NO DOCUMENTARY CHANGES AND NO CHANGES IN THE DEFINITION OF WHAT CONSTITUTES A VISITOR FOR BUSINESS, "B-1". A CITIZEN OF CANADA IS NOT REQUIRED TO PRESENT A NONIMMIGRANT VISA FOR ADMISSION AS A B-1 BUT MUST ESTABLISH CITIZENSHIP TO THE SATISFACTION OF THE INSPECTING OFFICER. A CITIZEN OF MEXICO MUST PRESENT A PASSPORT AND EITHER A NONIMMIGRANT VISA OR A BORDER CROSSING, CARD. BOTH CANADIAN AND MEXICAN CITIZENS MUST ESTABLISH THAT THEY ARE ADMISSIBLE UNDER THE IMMIGRATION AND NATIONALITY ACT.

BOTH CANADIAN AND MEXICAN CITIZENS MUST ESTABLISH THAT THEY QUALIFY AS A VISITOR FOR BUSINESS BY REASON OF HAVING PROVIDED EVIDENCE GENERALLY REQUIRED OF ANY BUSINESS VISITOR UNDER SECTION 101 (SMALL A) (15) (13) INCLUDING, BUT NOT LIMITED TO, THE SOURCE OF REMUNERATION, A DESCRIPTION OF THE PURPOSE OF ENTRY, AND EVIDENCE DEMONSTRATING THAT HE OR SHE IS ENGAGED IN ONE OF THE OCCUPATIONS OR PROFESSIONS SET FORTH IN APPENDIX 1603.A.1 OF CHAPTER 16 OR IF NOT SEEKING ADMISSION FOR THE PURPOSE OF ENGAGING IN ONE OF THE OCCUPATIONS OR PROFESSIONS SET FORTH IN APPENDIX 1603.A.1, THAT SAID PERSON IS OTHERWISE ELIGIBLE TO ENTER AS A VISITOR FOR BUSINESS IN ACCORDANCE WITH GENERAL B-1 PROVISIONS. TRADERS AND INVESTOR, E-1 AND E-2: COMMENCING JANUARY 1, 1994, A MEXICAN CITIZEN WILL FOR THE FIRST TIME BE ELIGIBLE TO SEEK THE ISSUANCE OF A NONIMMIGRANT VISA TO CLASSIFY HIM OR HER AS A TREATY TRADER OR INVESTOR. A CANADIAN CITIZEN WAS PREVIOUSLY ELIGIBLE TO APPLY FOR ISSUANCE OF A NONIMMIGRANT VISA TO CLASSIFY HIM OR HER AS A TREATY TRADER OR INVESTOR UNDER THE PROVISIONS OF PUBLIC LAW 100-449 IMPLEMENTING THE UNITED STATES-CANADA FREE TRADE AGREEMENT. BOTH A CANADIAN CITIZEN AND A MEXICAN CITIZEN MUST PRESENT A VALID, UNEXPIRED NONIMMIGRANT VISA INDICATING CLASSIFICATION AS A TREATY TRADER OR INVESTOR AT THE TIME OF APPLICATION FOR ADMISSION AS PROVIDED IN TITLE 8, CODE OF FEDERAL REGULATIONS PART 212.l. A CANADIAN CITIZEN WHO OBTAINS A CHANGE OF NONIMMIGRANT STATUS TO THAT OF A TREATY TRADER OR INVESTOR MUST BE IN POSSESSION OF A VALID NONIMMIGRANT VISA IN ORDER TO REENTER THE UNITED STATES FROM ANY FOREIGN TERRITORY IF STILL SEEKING ADMISSION AS A TREATY TRADER OR INVESTOR AS PRESCRIBED IN CURRENT OPERATIONS INSTRUCTIONS PART 248.8.

IF THE SECRETARY OF LABOR HAS CERTIFIED TO, OR OTHERWISE INFORMED, THE COMMISSIONER THAT THERE IS A STRIKE OR OTHER LABOR DISPUTE INVOLVING A WORK STOPPAGE OF WORKERS WHERE THE ALIEN INTENDS TO BE EMPLOYED, AND THE INSPECTING OFFICER BELIEVES THAT THE TEMPORARY ENTRY OF THAT ALIEN MAY AFFECT ADVERSELY EITHER THE SETTLEMENT OF SUCH LABOR DISPUTE OR THE EMPLOYMENT OF A PERSON INVOLVED IN THE DISPUTE, SAID ALIEN IS TO BE REFUSED ADMISSION. SEE NAFTA IMPLEMENTATION CABLE 003 FOR PRELIMINARY PROCEDURES.

INTRACOMPANY TRANSFEREE, L-1:
THERE IS NO SUBSTANTIVE CHANGE REGARDING THE CLASSIFICATION OR ADMISSION OF INTRACOMPANY TRANSFEREES UNDER CHAPTER 16 OF THE NAFTA. A CANADIAN CITIZEN SEEKING STATUS AS A QUOTE L-1 UNQUOTE MAY EITHER SUBMIT THE REQUIRED PETITION TO THE SERVICE CENTER HAVING JURISDICTION OVER THE INTENDED PLACE OF EMPLOYMENT OR AT A

PRESCRIBED CLASS A PORT OF ENTRY. PENDING THE PUBLICATION OF THE REVISED REGULATIONS AND APPROPRIATE PUBLIC DISSEMINATION OF INFORMATION, ANY CLASS A PORT OF ENTRY ENCOUNTERING A CANADIAN CITIZEN SEEKING TO SUBMIT A FORM 1-129 AT THE PORT OF ENTRY SHOULD ADJUDICATE THE PETITION. THE DOCUMENTARY REQUIREMENT SPECIFIED IN TITLE 8, CODE OF FEDERAL REGULATIONS PART 214.2 (L) (3) THAT THE BENEFICIARY PREVIOUSLY HAVE PERFORMED SERVICES FOR EMPLOYER OR A SUBSIDIARY OR AFFILIATE THE SAME THEREOF IN A MANAGERIAL, EXECUTIVE, OR SPECIALIZED KNOWLEDGE CAPACITY FOR A FOREIGN PARENT, BRANCH, SUBSIDIARY, OR AFFILIATE OF THE UNITED STATES EMPLOYER FOR ONE OUT OF THE PRECEDING THREE YEARS CONTINUES IN EFFECT AND THE RELATED REQUIREMENTS SPECIFIED IN THE REGULATIONS AND IN THE INSTRUCTIONS TO FORM 1-129 MUST STILL BE ADHERED TO.

IF THERE IS A STRIKE OR OTHER LABOR DISPUTE IN PROGRESS AT THE PLACE OF INTENDED EMPLOYMENT AND THE SECRETARY OF LABOR HAS CERTIFIED TO, OR OTHERWISE INFORMED, THE COMMISSIONER THAT THERE IS A STRIKE, A DETERMINATION MUST BE MADE AS TO WHETHER THE ADMISSION OF THE PARTICULAR INTRACOMPANY TRANSFEREE APPLICANT MAY AFFECT
ADVERSELY EITHER THE LABOR DISPUTE ITSELF OR THE EMPLOYMENT OF A PERSON INVOLVED IN THE DISPUTE. IF CERTIFICATION OR OTHER DEPARTMENT OF LABOR INFORMATION OF THE EXISTENCE OF A STRIKE OR OTHER LABOR DISPUTE HAS BEEN PROVIDED AND THE ADMISSION OF THE APPLICANT IS BELIEVED TO AFFECT ADVERSELY EITHER OF THE ABOVE, THE APPLICANT SHALL BE REFUSED ADMISSION AND APPROPRIATE NOTIFICATION REGARDING THE REFUSAL IS TO BE PROVIDED TO HQADN.

PROFESSIONALS, TN:
A. GENERAL: THE IMPLEMENTING LEGISLATION FOR NAFTA PROVIDES FOR THE CREATION OF A NEW NONIMMIGRANT CLASS, THE "TN" FOR CERTAIN CANADIAN AND MEXICAN CITIZEN PROFESSIONALS. THE IMPLEMENTING LEGISLATION ALSO PROVIDES FOR THE CREATION OF A SEPARATE NONIMMIGRANT CLASS FOR THE SPOUSES AND UNMARRIED MINOR CHILDREN OF PROFESSIONALS, THE "TD". BOTH CANADIAN CITIZENS AND MEXICAN CITIZENS WILL BE ELIGIBLE TO SEEK ADMISSION AS NAFTA PROFESSIONALS SCHEDULE 2 OF THE UNITED STATES-CANADA FREE TRADE AGREEMENT HAS BEEN INCORPORATED INTO THE NAFTA AGREEMENT AND IS SET FORTH IN APPENDIX 1603.D.1 OF CHAPTER 16.

B. CANADIAN CITIZEN REQUESTS FOR TN CLASSIFICATION:
EFFECTIVE JANUARY 1, 1994, A CANADIAN CITIZEN SEEKING ADMISSION AS A PROFESSIONAL AT A PORT OF ENTRY WILL BE CLASSIFIED AS A "TN". APPLICATION MAY BE MADE AT ANY CLASS A PORT OF ENTRY, A UNITED STATES AIRPORT HANDLING INTERNATIONAL TRAFFIC, OR A PRE-CLEARANCE STATION. THE INSPECTING OFFICER SHALL, AFTER DETERMINING CANADIAN CITIZENSHIP, REVIEW ANY LETTERS AND OTHER EVIDENCE SUBMITTED BY THE APPLICANT TO DETERMINE WHETHER THE APPLICANT QUALIFIES AS A PROFESSIONAL AND THAT THE APPLICANT IS COMING TO BE EMPLOYED IN THE CAPACITY OF A PROFESSIONAL. IF A DETERMINATION IS MADE THAT THE APPLICANT WILL BE SO EMPLOYED, THE PROCEDURES IN THE UNITED STATES-CANADA FREE TRADE AGREEMENT FOR THE ADMISSION OF QUALIFIED PROFESSIONALS AS 'TC" SHALL BE FOLLOWED. A CANADIAN CITIZEN ADMITTED AS A "TC" PRIOR TO JANUARY 1. 1994 MAY REMAIN IN THE UNITED STATES SO LONG AS HE OR SHE IS MAINTAINING STATUS UNTIL THE AUTHORIZED PERIOD OF ADMISSION EXPIRES. WHEN A REQUEST FOR EXTENSION OF TEMPORARY STAY IS FILED BEFORE THE SERVICE, THE APPLICANT'S STATUS IS TO BE AUTOMATICALLY CONVERTED TO THAT OF A TN PROFESSIONAL AS I PART OF THE ADJUDICATION PROCESS WITHOUT THE PAYMENT OF AN ADDITIONAL FEE. AS STATED IN THE STATEMENT OF ADMINISTRATIVE ACTION TO THE LEGISLATION IMPLEMENTING NAFTA, CHAPTER 16, SELF-EMPLOYMENT IS SPECIFICALLY PRECLUDED FOR THE "TN" CLASSIFICATION. EFFECTIVE JANUARY 1, 1994, SUCH PROFESSIONALS ARE NOT AUTHORIZED TO ENGAGE IN SELF-EMPLOYMENT IN THIS COUNTRY. IF THE APPLICANT IS A SELF-EMPLOYED PROFESSIONAL, THE REQUEST FOR EXTENSION IS TO BE DENIED AND THE APPLICANT IS TO BE GRANTED 30 DAYS TO VOLUNTARILY DEPART FROM THE UNITED STATES AND THE APPLICANT IS TO BE ADVISED THAT OTHER NONIMMIGRANT CLASSIFICATIONS MAY BE SUITABLE TO PERMIT THE DEVELOPMENT AND DIRECTION OF A BUSINESS INVESTMENT IN THE UNITED STATES. IF THE CANADIAN CITIZEN PREVIOUSLY ADMITTED AS A PROFESSIONAL UNDER THE PROVISIONS OF THE UNITED STATES--CANADA FREE TRADE AGREEMENT PROCEEDS OUTSIDE THE UNITED STATES PRIOR TO

THE EXPIRATION OF THE AUTHORIZED PERIOD OF ADMISSION, AND THEREAFTER SAID CANADIAN CITIZEN SEEKS READMISSION TO THE UNITED STATES, THE CANADIAN CITIZEN IS TO BE QUESTIONED REGARDING HIS OR HER EMPLOYMENT AND MUST PRESENT AN UNEXPIRED FORM 1-94 OR AN 1-797 OR OTHER ACCEPTABLE EVIDENCE REFLECTING THE GRANTING OF AN APPLICATION FOR EXTENSION OF TEMPORARY STAY. IF THE APPLICANT FOR READMISSION IS CONTINUING EMPLOYMENT WITH THE SAME EMPLOYER FOR WHICH HE OR SHE WAS LAST AUTHORIZED TO RENDER PROFESSIONAL SERVICES, SUCH PROFESSIONALS SHALL BE REQUIRED TO SURRENDER THEIR OLD FORM 1-94 INDICATING ADMISSION IN TC CLASSIFICATION. UPON SURRENDER OF THE OLD FORM 1-94, SUCH PROFESSIONAL WILL BE ISSUED A NEW FORM 1-94 BEARING THE LEGEND "MULTIPLE ENTRY" AND INDICATING THAT HE OR SHE HAS BEEN READMITTED IN "TN" CLASSIFICATION. THE OLD FORM 1-94 CLASSIFYING THE APPLICANT AS A TC IS TO BE LIFTED AND A NEW FORM 1-94 CLASSIFYING THE APPLICANT AS A TN IS TO BE ISSUED. THE VALIDITY PERIOD OF THE NEWLY ISSUED FORM 1-94 IS TO CORRESPOND TO THE SAME DATE AS THAT ON THE ORIGINAL DOCUMENT WITHOUT THE COLLECTION OF A NEW FEE. IF THE CANADIAN CITIZEN IS NO LONGER IN POSSESSION OF THE FORM 1-94 PREVIOUSLY ISSUED GRANTING SAID CANADIAN CITIZEN PROFESSIONAL "TC" STATUS AND THE PERIOD OF INITIAL ADMISSION HAS NOT LAPSED, HE OR SHE SHALL PRESENT SUITABLE ALTERNATIVE EVIDENCE THEREOF. IF, DURING THE INSPECTION PROCESS, THE INSPECTING OFFICER FINDS THAT THE APPLICANT IS A SELF-EMPLOYED PROFESSIONAL, THE FORM 1-94 IS TO BE LIFTED AND THE APPLICANT IS TO BE ADMITTED AS A VISITOR FOR BUSINESS FOR SUFFICIENT TIME TO SETTLE HIS AFFAIRS AND DEPART FROM THE UNITED STATES OR TO SEEK A CHANGE OF STATUS TO A SUITABLE NONIMMIGRANT CLASSIFICATION.

C. MEXICAN CITIZENS SEEKING TN CLASSIFICATION: UNDER NAFTA,
A MEXICAN CITIZEN MAY ALSO SEEK ADMISSION AS A PROFESSIONAL. THE MEXICAN CITIZEN WILL REQUIRE THE ISSUANCE OF A NONIMMIGRANT VISA ACCORDING CLASSIFICATION AS A PROFESSIONAL. IN ADDITION TO PRESENTING THE PASSPORT CONTAINING A VALID "TN" VISA, THE MEXICAN CITIZEN SEEKING ADMISSION MUST ALSO PRESENT A COPY OF THE UNITED STATES EMPLOYER'S STATEMENT WHICH ACCOMPANIED THE PETITION FOR TN CLASSIFICATION. PRIOR TO THE ISSUANCE OF THE NONIMMIGRANT VISA, THE MEXICAN CITIZEN SEEKING STAI"US AS A PROFESSIONAL WILL NEED TO BE THE BENEFICIARY OF AN APPROVED PETITION. PETITIONS FILED ON BEHALF OF MEXICAN CITIZENS SEEKING QUOTE TN UNQUOTE STATUS MAY NOT BE APPROVED UNLESS PROSPECTIVE EMPLOYERS HAVE PROPERLY FILED WITH THE DEPARTMENT OF LABOR AN LCA IN ACCORDANCE WITH SECTION 212(SMALL M) OF THE ACT IN THE CASE OF REGISTERED NURSES OR A LABOR ATTESTATION UNDER SECTION 212 (SMALL N) OF THE ACT IN THE CASE OF OTHER PROFESSIONALS. . THE UNITED STATES EMPLOYER WILL FORWARD FORM 1-129 ENTITLED PETITION FOR NONINIMIGRANT WORKER, TO THE NORTHERN SERVICE CENTER IN LINCOLN, NEBRASKA WITH THE REQUIRED LABOR ATTESTATION OR LABOR CONDITION STATEMENT AND SUCH OTHER EVIDENCE AS MAY BE REQUESTED. THE MEXICAN CITIZEN SEEKING STATUS AS A PROFESSIONAL THUS WILL BE REQUIRED TO HAVE HAD ALL DOCUMENTATION SUBMITTED PRIOR TO HIS OR HER ARRIVAL AT ANY PORT OF ENTRY.

D. EFFECT OF A STRIKE ON TN CLASSIFICATION:
IF THE SECRETARY OF LABOR HAS CERTIFIED TO OR OTHERWISEINFORMED THE COMMISSIONER THAT THERE IS A STRIKE OR OTHER LABOR DISPUTE IN PROGRESS AT THE SITE OF THE INTENDED UNITED STATES EMPLOYER, A DETERMINATION MUST BE MADE AS TO WHETHER OR NOT THE ADMISSION OF TH E APPLICANT MAY ADVERSELY AFFECT EITHER THE SETTLEMENT OF THE STRIKE OR OTHER LABOR DISPUTE OR.THE EMPLOYMENT OF ANY EMPLOYEE PRESENTLY INVOLVED IN THE DISPUTE. IF A DETERMINATION IS MADE THAT THE ADMISSION OF THE APPLICANT MAY HAVE SUCH AN EFFECT, THE APPLICANT IS TO BE REFUSED ADMISSION AND APPROPRIATE NOTIFICATION TO HEADQUARTERS, EXAMINATIONS BRANCH, MUST BE PROVIDED. SEE NAFTA IMPLEMENTATION CABLE 003.

E. ADMISSION PROCEDURES FOR BOTH CANADIAN AND MEXICAN TN PROFESSIONALS:
WHEN A DETERMINATION IS MADE TO ADMIT EITHER THE CANADIAN OR MEXICAN CITIZEN AS A PROFESSIONAL UNDER NAFTA, FORM 1-94 IS TO BE COMPLETELY EXECUTED AND MUST BE ENDORSED TO SHOW THE DATE AND PLACE OF ADMISSION AND THE PERIOD OF ADMISSION. IN ADDITION, BLOCK 18 ON THE BACK OF FORM 1-94 IS TO BE ENDORSED TO SHOW THE SPECIFIC OCCUPATION AS SET FORTH IN APPENDIX 1603.D.1 OF CHAPTER 16 OF NAFTA, THE NAME OF THE EMPLOYER MUST BE ENDORSED ON BOTH THE ARRIVAL AND DEPARTURE FORMS 1-94, AND THE

FORM 1-94 MUST BE ENDORSED TO SHOW "MULTIPLE ENTRY." THE INSPECTING OFFICER IS REQUIRED TO PLACE THE ABOVE INFORMATION ON FORM 1-94 IN ORDER THAT INS COMPLY WITH THE REPORTING REQUIREMENTS UNDER NAFTA.

DEPENDENTS OF NAFTA TEMPORARY ENTRANTS:
THE DEPENDENTS OF A VISITOR FOR BUSINESS, A TREATY TRADER OR INVESTOR, AN INTRACOMPANY TRANSFEREE, AND A PROFESSIONAL ARE NOT AUTHORIZED EMPLOYMENT BY VIRTUE OF THEIR DEPENDENT STATUS- IT MAY BE POSSIBLE FOR THE DEPENDENTS TO QUALIFY FOR ADMISSION IN A WORK-AUTHORIZED NONIMMIGRANT CLASSIFICATION IN THEIR OWN RIGHT.

IF THE DEPENDENT WAS PREVIOUSLY ADMITTED TO THE UNITED STATES AS A VISITOR FOR PLEASURE AS THE DEPENDENT OF A "TC" PROFESSIONAL UNDER THE UNITED STATES CANADA FREE TRADE AGREEMENT, THAT DEPENDENT MAY BE READMITTED TO THE UNITED STATES WITHOUT A VISA FOLLOWING A SHORT ABSENCE AS A "TD" IF THE DEPENDENT IS EITHER A CANADIAN CITIZEN OR FROM A BRITISH COMMONWEALTH COUNTRY HOLDING LANDED STATUS IN CANADA, AS LONG AS THE DEPENDENT PROVIDES SUFFICIENT EVIDENCE TO ENABLE THE INSPECTING OFFICER TO CONCLUDE THAT THEY ARE EITHER A CANADIAN CITIZEN OR HOLD LANDED STATUS IN CANADA FROM A BRITISH COMMONWEALTH COUNTRY AND THE PRINCIPAL APPLICANT IS NOT SELF-EMPLOYED IN THE UNITED STATES.

IF THE PRINCIPAL IS SELF-EMPLOYED, THE DEPENDENTS WOULD NOT BE ELIGIBLE FOR READMISSION FOLLOWING A BRIEF AND CASUAL ABSENCE. IF THE DEPENDENT IS NOT EXEMPT FROM THE REQUIREMENT OF PRESENTING A VALID AND UNEXPIRED NONIMMIGRANT VISA, THE DEPENDENT MUST EITHER PRESENT A VALID NONIMMIGRANT VISA CLASSIFYING THEM AS A "TD" OR ELSE HAVE OBTAINED A CHANGE OF NONIMMIGRANT STATUS TO "TD" AND MEET THE REQUIREMENTS FOR AUTOMATIC VISA REVALIDATION. IF ELIGIBLE, THE DEPENDENTS MAY BE GRANTED READMISSION AND ISSUED DOCUMENTATION ACCORDING THEM "TD" STATUS UP TO THE REMAINING PERIOD OF TIME HELD BY THE PRINCIPAL ALIEN PROFESSIONAL. THE DEPENDENTS OF A CANADIAN CITIZEN PROFESSIONAL ADMITTED UNDER THE PROVISIONS OF THE UNITED STATES-CANADA FREE TRADE AGREEMENT WILL HAVE THEIR STATUS AUTOMATICALLY CONVERTED FROM "B-2" TO "TD" WITHOUT THE PAYMENT OF AN ADDITIONAL FEE AS LONG AS THE PRINCIPAL ALIEN IS MAINTAINING STATUS AND IS NOT SELF-EMPLOYED. IF THE PRINCIPAL CANADIAN PROFESSIONAL ADMITTED PRIOR TO JANUARY 1, 1994 IS SELF-EMPLOYED, THE REQUEST FOR EXTENSION SUBMITTED BY THE DEPENDENTS IS TO BE DENIED AS STATUS IS DEPENDENT UPON THAT OF THE PRINCIPAL. THE DEPENDENTS ARE TO BE GRANTED THE SAME PERIOD OF VOLUNTARY DEPARTURE AS THE PRINCIPAL ALIEN. QUESTIONS REGARDING THESE POLICIES MAY BE DIRECTED TO HQADN/NONIMMIGRANT BRANCH AT.

THIS IS NAFTA IMPLEMENTATION CABLE 006

THE SERVICE PUBLISHED AN INTERIM REGULATION CONTROLLING THE IMPLEMENTATION OF THE TEMPORATY ENTRY PROCEDURES OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) ON DECEMBER 30, 1993 (58 FEDERAL REGISTER 69205). PUBLIC COMMENT WILL BE ACCEPTED UNTIL FEBRUARY 29, 1994. THIS INTERIM RULE SHOULD BE MADE AVAILABLE TO ALL PRSONNEL INVOLVED WITH THE PROCESSING OF IMMIGRATION BENEFITS UNDER NAFTA. NAFTA IMPLEMENTATION CABLE 005 DERIVES FROM THE INTERIM RULE.

THE DEPARTMENT OF LABOR/WAGE AND HOUR DIVISION PUBLISHED AN INTERIM RULE ON DECEMBER 30, 1993 (58 FEDERAL REGISTER 69226) TO IMPLEMENT PROCEDURAL REQUIREMENTS APPLICABLE TO THE TEMPORARY ENTRY OF NAFTA PROFESSIONALS FROM MEXICO. BASICALL, UNITED STATES EMPLOYES SEEKING TO ENGAGE THE PRORESSIONAL SERVICES OF A MEXICA CITIZEN PURSUAT TO CAHPTER 16 OF NAFTA SHALL FOLLOW PROCEDURES IMPLEMENTING SECION 212(n) OF THE IMMIGRATION AND NATIIONALITY ACT (LABOR CONDITION APPLICATION) AND SECTION 212(m) OF THE INA FOR REGISTERED NURSES.

THE DEPARTMENT OF STATE/VISA OFFICE PUBLISHED AN INTERIM RULE ON DECEMBER 28, 1993 (58 FEDERAL REGISTER 68526) TO IMPLEMENT CHAPTER 16 OF NAFTA. CONSULAR POSTS WILL BE AUTHORIZED TO ISSUE TN AND TD VISAS

QUESTIONS MAY BE DIRECTED TO HQADN/NONIMMIGRANT BRANCH.

NAFTA IMPLEMENTATION CABLE 007

THE PURPOSE OF THIS CABLE IS TO PROVIDE INFORMATION FROM THE DEPARTMENT OF STATE REGARDING NAFTFA VISA ISSUANCE:

THE DEPARTMENT OF STATE (DOS) ADVISES THAT POSTS ARE INSTRUCTED TO BEGIN ISSUING NAFTA-RELATED NONIMMIGRANT VISAS (NIV) IN THE FOLLOWING MANNER:

1. E-1, E-2, L, AND B-1 NIVS: POSTS WILL CONTINUE TO ISSUE NIV FOR TREATY TRADERS AND INVESTORS, INTRACOMPANY TRANSFEREES, AND BUSINESS VISITORS IN ACCORDANCE WITH EXISTING PROCEDURES. NAFTA LEGISLATION ENABLES MEXICAN CITIZEN TO SEEK CLASSIFICATION AS E-1/E-2 FOR THE FIRST TIME. CANADIAN CITIZENS ARE REPEAT ARE REQUIRED TO OBTAIN AN E-1/E-2 NIV FOR ADMISSION TO THE UNITED STATES.

2. TN PROFESSIONAL NIVS AND TD DEPENDENT NIVS: DOS ADVISES THAT NECESSARY SOFTWARE CHANGES WILL NOT BE COMPLETED FOR APPROXIMATELY SIX MONTHS TO ENABLE POSTS EQUIPPED TO ISSUED MACHINE READABLE VISAS (MRVS) THE CAPABILITY TO ISSUE TN OR TD NIVS. IN THE MEANWHILE, MRV POSTS WILL ISSUE N-8 NIVS TO QUALIFIED MEXICAN OR CANADIAN APPLICANTS FOR TN STATUS AND N-9 NIVS TO QUALIFIED APPLICANTS SEEKING TO CLASSIFICATION. DOS HAS INSTRUCTED MRV POSTS TO ANNOTATE THE N-8 AND N-9 NIVS WITH THE FOLLOWING: "ADMIT NAFTA TN BY N-8" OR "ADMIT NAFTA TD BY N-9". N-8 AND N-9 NIVS FOR NAFTA APPLICANTS WILL BE ANNOTATED FURTHER WITH THE NAFTA OCCUPATION OF THE TN AND, IN THE CASE OF MEXICAN TN APPLICANTS, THE RECEIPT NUMBER OF THE APPROVED PETITION FROM THE NORTHERN SERVICE CENTER. NOTE THAT POSTS MAY STILL USE THE N-8 AND N-9 CLASSIFICATIONS FOR THEIR ORIGINAL PURPOSE TO DESIGNATE DEPENDENTS OF SK SPECIAL IMMIGRANTS. INS OFFICERS WILL BE ABLE TO DISTINGUISH BETWEEN THE TWO USES OF THE CLASSIFICATIONS BY THE ANNOTATION. DOS FURTHER ADVISES THAT POSTS EQUIPPED TO ISSUE BURROUGHS NIVS WILL INSERT THE TN OR TD CLASSIFICATION SYMBOL ON THE NIV AND ANNOTATE WITH THE NAFTA OCCUPATION AND, IN THE CASE OF A MEXICAN TN APPLICANT, RECEIPT NUMBER OF THE APPROVED PETITION.

3. FOR YOUR READY REFERENCE, DOS PROVIDED THE NIV ISSUING CAPABILITIES OF POSTS LOCATED IN CANADA AND MEXICO. THIS LISTING IS SUBJECT TO CHANGE: CANADIAN POSTS- MONTREAL AND TORONTO ARE MRV POSTS. VANCOUVER, CALGARY, OTTAWA, QUEBEC, AND HALIFAX ARE BURROUGHS POSTS.

MEXICAN POSTS- MEXICO CITY, HERMOSILLO, TIJUANA, AND CIUDAD JUAREZ ARE MRV POSTS. MONTERREY, GUADALAJARA, MATAMOROS, AND MERIDA ARE BURROUGHS POSTS.

4. POE PROCESSING. ALIENS IN POSSESSION OF N-8 OR N-9 NAFTA ANNOTATED NIVS WHO ARE OTHERWISE ADMISSIBLE TO THE UNITED STATES SHALL BE ISSUED FORM 1-94 AS TN OR TD RESPECTIVELY. ALIENS IN POSSESSION OF A BURROUGHS TYPE NIV WHO ARE OTHERWISE ADMISSIBLE SHALL BE ISSUED FORM I-94 AS TN OR TD AS NOTED ON THE NIV. ON THE REVERSE SIDE OF THE 1-94, BLOCK 18 RELATING TO THE OCCUPATION SHALL BE ANNOTATED WITH THE NAFTA OCCUPATION OF THE TN AND THE NAME OF THE EMPLOYER MUST BE ANNOTATED ON THE REVERSE SIDE OF BOTH THE ARRIVAL AND DEPARTURE PORTION OF THE I94.

QUESTIONS REGARDING THIS INSTRUCTION MAY BE ADDRESSED TO HQADN/NONIMMIGRANT BRANCH.

NAFTA IMPLEMENTATION CABLE 008.

SEVERAL QUESTI0NS HAVE BEEN RAISED REGARDING THE CONCEPT OF "SELF EMPLOYMENT" ASSOCIATED WITH THE NAFTA PROFESSI0NAL (TN) CLASSTFICATION. HEADQUARTERS ACKNOWLEDGES THE IMPORTANCE OF ADDRESSING THIS CONCEPT IN GREATER DETAIL TO ENSURE UNIFORM APPLICATION OF THE TN PROVISIONS. HOWEVER, THE TRILATERAL NATURE OF THE NAFTA ENTRY PROVISIONS COUPLED WITH THE COMPLEXITY OF THE ISSUE DEMAND CONCERTED STUDY BY CANADIAN, MEXICAN, AND UNITED STATES OFFICIALS.

ARTICLE 1605 OF NAFTA ESTABLISHES A TEMPORARY ENTRY WORKING GROUP COMPRISED OF IMMIGRATION OFFICIALS FROM CANADA, MEXICO, AND THE UNITED STATES. THE FIRST MEETING OF THIS WORKING GROUP CONVENED IN MARCH 1994 IN WASHINGTON AND THE AGENDA INCLUDED THE ISSUE OF "SELF EMPLOYMENT" OF NAFTA PROFESSIONALS CANADA, MEXICO, AND THE UNITED STATES HAVE UNDERTAKEN COMMITMENTS TO FACILITATE ENTRY OF BUSINESS PERSONS ON A RECIPROCAL BASIS AND IT IS IMPORTANT THAT THE PROVISIONS OF CHAPTER 16 ARE APPLIED BY THE THREE PARTIES ON A RECIPROCAL BASIS UNTIL FINAL RESOLUTION OF THIS ISSUE IS REACHED AMONG THE THREE PARTIES AND ADDITIONAL GUIDANCE CAN BE PROVIDED. HEADQUARTERS DRAWS CLOSE ATTENTION TO THE FOLLOWING:

1. THE STATEMENT OF ADMINISTRATIVE ACTION ACCOMPANYING THE IMPLEMENTING LEGISLATION FOR NAFTA CHAPTER 16, PAGE 178 OF THE STATEMENT OF ADMINISTRATIVE ACTION PROVIDES IN PERTINENT PART, "SECTION D OF ANNEX 1603, DOES NOT AUTHORIZE A PROFESSIONAL TO ESTABLISH A BUSINESS OR PRACTICE IN THE UNITED STATES IN WHICH THE PROFESSIONAL WILL BE SELF-EMPLOYED".

2. CITIZENSHIP AND IMMIGRATION CANADA OPERATIONS MEMORANDUM: CITIZENSHIP AND IMMIGRATION CANADA INSTRUCTIONS TO ITS FIELD OFFICERS INSTRUCTS THAT THE PURPOSE OF ENT RY OF NAFTA PROFESSIONALS INTO CANADA MUST BE TO PROVIDE PRE-ARRANGED SERVICES TO A CANADIAN ENTERPRISE.

3. NAFTA: ANNEX 1603 SECTION B - TRADERS AND INVESTORS: INVESTMENT OPPORTUNITIES BY CITIZENS OF NAFTA PARTIES IS RECOGNIZED IN SECTION B OF ANNEX 1603. THE INS REGULATIONS REFLECT THAT A CANADIAN OR MEXTCAN CITIZEN SEEKING TO DIRECT AND DEVELOP AN INVESTMENT IN THE UNITED STATES MAY APPLY FOR CLASSIFICATION AS AN E-2 NONIMMIGRANT.

4. NAFTA: ANNEX 1603 SECTION C - INTRACOMPANY TRANSFEREES:
THE AUTHORITY OF THE UNITED STATES TO CARRY OUT THE INTRACOMPANY TRANSFEREE COMMITMENTS IN ANNEX 1603 IS FOUND IN EXISTING STATUTE AND REGULATION CONTROLLING THE L NONIMMIGRANT CLASSIFICATION, THE REGULATIONS AT 8 CFR 214.2 (SMALL L) SET FORTH THE REQUIREMENTS TO ESTABLISH A NEW OFFICE IN THE UNITED STATES. A CANADIAN OR MEXICAN CITIZEN WHO QUALIFIES FOR L CLASSIFICATION UNDER THESE REGULATIONS MAY BE ADMISSIBLE TO OPEN A NEW BUSINESS. NONE OF THE ABOVE REFERENCES PRECLUDES A CITIZEN OF CANADA OR MEXICO WHO IS SELF-EMPLOYED OUTSIDE OF THE UNITED STATES FROM SEEKING ENTRY TO THE UNITED STATES TO ENGAGE IN A PRE-ARRANGED ACTIVITY AT THE PROFESSIONAL *LEVEL* LISTED IN APPENDIX 1603.D.1 *FOR AN* ENTERPRISE OWNED BY A PERSON OR ENTITY OTHER THAN HIM OR HERSELF WHICH IS LOCATED IN THE UNITED STATES**.** ADDITIONAL GUIDANCE WILL BE PROVIDED AS IT IS DEVELOPED THROUGH THE TEMPORARY ENTRY WORKING GROUP.

Signed: ACTING EXECUTIVE ASSOCIATE COMMISSIONER FOR OPERATIONS

NAFTA IMPLEMENTATION CABLE 009.

THE PURPOSE OF THIS CABLE IS TO ALERT FIELD OFFICE PERSONNEL THAT AN ARTICLE ENTITLED 'IMMIGRATION PROVISIONS OF THE NORTH AMERICAN FREE TRADE AGREEMENT " WAS PUBLISHED IN IMMIGRATION BRIEFINGS, NUMBER 94, DATED MARCH 1994. THE ARTICLE REFERS TO PRELIMINARY DRAFT OPERATIONS INSTRUCTIONS REGARDING NAFTA. THE REFERENCE IS INACCURATE. INS HEADQUARTERS HAS PROVIDED NO PRELIMINARY DRAFT OPERATIONS INSTRUCTIONS TO ANY SOURCE AND HAS NO KNOWLEDGE OF SUCH PRELIMINARY DRAFT OPERATIONS. CURRENTLY, THE INS AUTHORITY TO IMPLEMENT THE TEMPORARY ENTRY PROVISIONS OF NAFTA ARE FOUND UNDER STATUTE (THE NORTH AMERICAN FREE TRADE IMPLEMENTATION ACT, PUBLIC LAW 103-182) AND UNDER REGULATION AS PUBLISHED AS AN INTERIM RULE IN THE FEDERAL REGISTER ON DECEMBER 30, 1993 (58 FEDERAL REGISTER 69202). OPERATIONS INSTRUCTIONS WILL BE DISSEMINATED AFTER PROMULGATION OF A FINAL RULE. QUESTIONS CONCERNING NAFTA IMPLEMENTATION POLICY MAY BE DIRECTED TO HEADQUARTERS ADJUDICATIONS, NONIMMIGRANT BRANCH.

NAFTA IMPLEMENTATION CABLE 010.

THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVES HAS CONFIRMED THAT THE TERMS AND COVERAGE UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) SHALL NOT APPLY IN RESPECT TO GUAM, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AMERICAN SAMOA AND THE UNITED STATES VIRGIN ISLANDS. REFERENCES IN NAFTA TO A STATE OF THE UNITED STATES SHALL BE DEEMED TO REFER ALSO TO THE DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF PUERTO RICO.

ACCORDINGLY, CHAPTER 16 OF NAFTA, TEMPORARY ENTRY, SHOULD NOT BE APPLIED TO CITIZENS OF MEXICO OR CANADA SEEKING ENTRY TO GUAM, THE NORTHERN MAIRANA ISLANDS, AMERICAN SAMOA, OR THE UNITED STATES VIRGIN ISLANDS.

QUESTIONS ABOUT THE SCOPE OF COVERAGE OF NAFTA MAY BE DIRECTED TO HEADQUARTERS ADJUDICATIONS, NONIMMIGRANT BRANCH.

NAFTA IMPLEMENTATION WIRE 011

I. STRIKEBREAKER PROVISIONS-GENERAL.

CHAPTER 16 OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) INCLUDES AN IMPORTANT SAFEGUARD FOR THE DOMESTIC LABOR FORCE OF EACH NAFTA COUTNRY WHICH THE UNITED STATES-CANADA FREE-TRADE AGREEMENT DID NOT CONTAIN. THIS PROVISION UNDER ARTICLE 1603 ALLOWS EACH NAFTA COUNTRY TO REFUSE TO ISSUE AN IMMIGRATION DOCUMENT AUTHORIZING EMPLOYMENT WHERE THE TEMPORARY ENTRY OF THE NAFTA BUSINESS PERSON MIGHT AFFECT ADVERSELY THE OUTCOME OF A LABOR DISPUTE OR THE EMPLOYMENT OF ANY WORKER INVOLVED IN SUCH A LABOR DISPUTE.

ENABLING LEGISLATION (THE NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT) AUTHORIZES THE UNITED STATES TO INVOKE THIS NAFTA PROVISION AT SECTION 214(SMALL J) OF THE IMMIGRATION AND NATIONALITY ACT.

SPECIFICALLY, THE PROVISION APPLIES TO CANADIAN AND MEXICAN CITIZENS SEEKING ENTRY TO THE UNITED STATES AS TRADERS AND INVESTORS (E-1 AND E-2), INTRACOMPANY TRANSFEREES (L-1), AND PROFESSIONALS (TN). THE UNITED STATES SHALL CARRY OUT THIS "STRIKEBREAKER PROVISION" AT THE TIME OF: 1. ADJUDICATION OF THE PETITION, WHERE REQUIRED, OR; 2. APPLICATION FOR NONIMMIGRANT VISA, WHERE REQUIRED, OR; 3. APPLICATION FOR ADMISSION AT A POE.

THE CURRENT REGULATIONS CONTROLLING THE E, L, AND TN CATEGORIES PROVIDE THAT THE SECRETARY OF LABOR SHALL CERTIFY TO OR OTHERWISE INFORM THE INS THAT A STRIKE OR OTHER LABOR-DISPUTE INVOLVING A WORK STOPPAGE IS IN PROGRESS, AND THAT THE TEMPORARY ENTRY OF THE CANADIAN OR MEXICAN CITIZEN IN SUCH NONIMMIGRANT CLASSIFICATION MAY AFFECT ADVERSELY THE SETTLEMENT OF ANY LABOR DISPUTE OR THE EMPLOYMENT OF ANY PERSON WHO IS INVOLVED IN SUCH DISPUTE. SUCH NOTIFICATION FROM THE DEPARTMENT OF LABOR MAY INCLUDE THE LOCATIONS AND OCCUPATIONS AFFECTED BY THE STRIKE.

BASED UPON SUCH NOTIFICATION OR CERTIFICATION OF THE SECRETARY OF LABOR AND AS PROVIDED AT 8 CFR 214.2(e), OR 8 CFR 214.2(l)(18), OR CFR 214.6(SMALL K), THE SERVICE SHALL DETERMINE IF THE TEMPORARY ENTRY OF THE APPLICANT MAY AFFECT ADVERSELY THE SETTLEMENT OF ANY LABOR DISPUTE OR THE EMPLOYMENT OF ANY PERSON WHO IS INVOLVED IN SUCH DISPUTE.

WRITTEN NOTIFICATION OF REFUSAL MUST BE PROVIDED TO (1) THE NAFTA BUSINESS PERSON AND (2) THE NAFTA COUNTRY OF WHICH THE BUSINESS PERSON IS A CITIZEN.

II. PROCEDURES TO BE FOLLOWED

THIS WIRE PROVIDES GUIDANCE TO BE FOLLOWED IN ALL CASES WHERE NAFTA BUSINESS PERSONS ARE REFUSED CLASSIFICATION OR ADMISSION AS E-1, E-2, L-1, OR TN BASED ON ARTICLE 1603 OF NAFTA.

DEPENDENT FAMILY MEMBERS OF NAFTA BUSINESS PERSONS (E, L, AND TN) ARE NOT DIRECTLY SUBJECT TO THE PROVISIONS IN AS MUCH AS THEY ARE NOT AUTHORIZED TO WORK IN THE UNITED STATES INCIDENT TO THEIR DEPENDENT STATUS. HOWEVER, THEY ARE AFFECTED INDIRECTLY, AS THEY ARE CLASSIFIABLE AS E-1 OR E-2, L-2, AND TD SOLELY ON THE BASIS OF CLASSIFICATION OF THE PRINCIPAL ALIEN. WHERE A PRINCIPAL ALIEN IS REFUSED CLASSIFICATION UNDER NAFTA, THE DEPENDENT FAMILY MEMBERS ARE NOT CLASSIFIABLE AS DEPENDENTS.

FOR PURPOSES OF THIS PROVISION, THE EMPLOYMENT AUTHORIZATION DOCUMENT REFERS TO EITHER FORM 1-129, CLASSIFYING THE ALIEN AS L-1, E, OR TN, OR THE FORM 1-94, ARRIVAL-DEPARTURE RECORD.

STEPS TO BE TAKEN BY THE POE OR SERVICE CENTER:

1. NOTIFY IN WRITING THE APPLICANT OF THE REASONS FOR REFUSAL (THIS CAN BE ROUTINE INS NOTICE OF DENIAL AT A SERVICE CENTER, FORM 1-797, OR THE ROUTINE NOTICE OF REFUSAL AT THE POE).
2. NOTIFY HEADQUARTERS ADJUDICATIONS, CHIEF, NONIMMIGRANT BRANCH, IN WRITING (FAX 202-514-5014) OF THE REFUSAL. THE FOLLOWING INFORMATION MUST BE PROVIDED:

A) NAME AND ANY KNOWN ADDRESS OF THE BUSINESS PERSON
B) CITIZENSHIPP OF BUSINESS PERSON
C) DATE AND PLACE OF REFUSAL OF DOCUMENT AUTHORIZING EMPLOYMENT (1-94)
D) NAME AND ADDRESS OF PROSPECTIVE EMPLOYER
E) POSITION TO BE OCCUPIED
F) REQUESTED DURATION OF STAY
G) REASONS FOR REFUSAL
H) REFERENCE TO APPROPRIATE STATUTORY OR REGULATORY ACTHORITY FOR REFUSAL (IF APPLICABLE)
I) STATEMENT INDICATING THAT THE BUSINESS PERSON WAS INFORMED IN WRITING OF THE REFUSAL AND THE REASONS FOR THE REFUSAL.

HQADN SHALL NOTIFY IN WRITING THE APPROPRIATE GOVERNMENT OFFICIALS WHOSE CITIZEN WAS REFUSED AN EMPLOYMENT AUTHORIZATION DOCUMENT PURSUANT TO THIS FTA PROVISION.

III. INTENT OF PROVISION.

ARTICLE 1603 ESTABLISHED THIS SAFEGUARD TO BE CONSISTENT WITH THE OVERALL OBJECTIVES OF CHAPTER 16: RECOGNITION OF THE PREFERENTIAL TRADING RELATIONSHIP BETWEEN THE PARTIES THROUGH FACILITATED ENTRY PROCEDURES OF BUSINESS PERSONS WHILE ENSURING BORDER SECURITY AND PROTECTION OF THE DOMESTIC LABOR FORCE. THE APPLICATION OF THIS QUOTE STRIKEBREAKER PROVISION UNQUOTE SHALL BE MADE ON A CASEBY-CASE BASIS IN ORDER TO DETERMINE WHETHER THE NAFTA BUSINESS PERSONS ENTRY WOULDAFFECT ADVERSELY STRIKE OR OTHER LABOR DISPUTE. KEEP IN MIND THAT EXCECUTIVES, MANAGERS, AND OTHER SPECIALIZED EMPLOYEES OF A BUSINESS MAY BE ADMISSIBLE TO ENGAGE IN ACTIVITIES WHICH DO NOT AFFECT ADVERSELY A LABOR DISPUTE.

QUESTIONS CONCERNING THIS NAFTA PROVISION MAY BE DIRECTED THROUGH APPROPRIATE CHANNELS TO HQADN, NONIMMIGRANT BRANCH.
HQOPS

HQ 70/23.1-P HQ 70/21.1.14-P
HQ 50/5.1296 ACT.041

Instructions on the Processing of Certain Foreign Health Care Workers: IIRIRA Section 343

June 6, 1997

All District Directors
All Officers-in-Charge
All Service Center Directors
All Regional Directors
Office of Field Operations
All Regional Counsels
All District Counsels
Director of Training- Artesia
Director of Training- Glynco

Office of Examinations
(HQEXM)

The purpose of this memorandum is to provide you with additional information with respect to the processing of foreign health care workers affected by section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). As you know, this office published a memorandum dated January 28, 1997, which provided initial guidance with respect to the implementation of section 343. This memorandum updates certain portions of the January 28 memorandum.

Affected Occupations

Effective immediately, the only health care occupations covered by 212(a)(5)(C) of the Act, as added by section 343 of IIRIRA are the following: nurses, physical therapists, occupational, therapists, speech language pathologists, medical technologist, medical technicians and physician assistants. An alien coming to the United States to perform health care services in any other occupation, either as an immigrant or a nonimmigrant, is not subject to a determination of admissibility under INA 212(a)(5)(C). You will be notified as additional occupations are added to this listing. This is a significant change from the January 28 memorandum which applied the statutory provision to ail health care workers. This memorandum limits the applicability of the statutory provision to the occupations listed in the conference report.

Nonimmigrants-Waiver of Inadmissibility

The January 28 memorandum indicated that the INS and the Department of States (DOS) had agreed to a blanket waiver of inadmissibility under section 212 (a)(5)(C) for nonimmigrant health care workers lacking the required CGFNS certificate or other certification pursuant to section 212(d)(3)(A) until such time as appropriate certification procedures have been put in place. The Service will also waive inadmissibility under section 212(a)(5)(C) pursuant to section 212(d)(3)(B) for aliens already in possession of nonimmigrant visas or who are visa-exempt aliens, including Canadians applying for admission as TNs. Under this blanket waiver, Service officers at U.S. Ports-of-Entry and foreign pre-clearance sites may-accept applications for waivers. Any otherwise admissible nonimmigrant health-care worker who receives a waiver for section 212(a)(5)(C) inadmissibility shall be authorized admission into the United States with a single-entry Form 1-94 with a validity date of six (6) months. Otherwise admissible dependents covered by the blanket policy will also be authorized admission into the United States for a time coinciding with that of the principal alien.

Field Offices are hereby notified that this waiver should be granted without the filing of a formal application or fee. Further, any otherwise admissible nonimmigrant health-care worker granted a waiver of this provision shall be authorized admission into the United States with a single-entry Form 1-94 valid for six (6) months except in the case of aliens who reside in and commute from contiguous territories. These aliens shall be issued a multiple-entry Form 1-94 valid for six (6) months.

This procedure will be effective until further notice.
Nonimmigrants-Change of Status or Extensions of Temporary Stay

Applicants for a change of nonimmigrant status or for an extension of temporary stay under a nonimmigrant visa category involving a health care occupation may also be granted a waiver of 212(a)(5)(C) inadmissibility, without form or fee, and may be granted an extension of stay of 1 year or for the requested period of the extension of time if less than I year.

Immigrants-General

Service officers are reminded that the waiver procedures discussed above relate solely to nonimmigrant aliens and do not-apply to immigrant aliens. The statutory authority to grant waivers under 212(d)(3) of the Act applies to aliens seeking classification/admission as nonimmigrant aliens. Pursuant to the instructions contained in the January 28 memorandum with respect to the processing of immigrant health care workers, applications-for adjustment of status filed by aliens who are the beneficiaries of approved employment-based immigrant petitions to work as health care workers must be held-in abeyance until further notice.

An interagency task force has been established for the purpose of devising a procedure to implement section 343. The Service will issue a rule in the near future to implement section 343 of IERIRA. You will be advised of any further developments as soon as they occur.

Nurses

In part M of the January 28 memorandum, the INS discussed the certification requirements for registered nurses. The memorandum implied that a nurse could adjust status in the United States if the nurse obtained a certification from the Commission on Foreign Nursing Schools (CGFNS). Unfortunately, the certification contemplated in the memorandum has not been developed by the CGFNS. The current CGFNS certificate is not equivalent to the certification discussed in section 343 of IIRIRA. There are at least two differences between the two certifications. As a result a nurse may not adjust status in the United State or be admitted to the United States on an immigrant visa until such time as the nurse obtains a certificate issued under the provisions of section 343 of IIRIRA. Nurses seeking entry into the United States as nonimmigrant aliens should be processed pursuant to the instructions contained in the section of this memorandum discussing waivers.

Service officers should not advise an alien to obtain a certificate from CGFNS since the current certificate does not overcome this ground of inadmissibility. This provision applies to both aliens educated in the United States and abroad.

For further information, please contact Adjudications Officer John W. Brown at 202-514-3240.

Louis D. Crocetti, Jr.
Associate Commissioner

U.S. Department of Justice
Immigration and Naturalization Service
425 1 Street NW
Washington, , DC 2036

APR 30, 1998

HQ 70/23.1P HQ 70/21.1.14-P
HQ 50/5-12 96 ACT.069

MEMORANDUM FOR: All District Directors
All Officers-in-Charge
All Service Center Directors
Ail Regional Directors
All Regional Counsels
All District Counsels
Director of Training-Artesia, NM
Director of Training- Glynco, GA

FROM: Joseph R. Greene
Acting Associate Commissioner
Programs

SUBJECT: **Temporary Admission of Foreign Health Care Workers**

The purpose of this memorandum is to clarify the procedure for the temporary admission to the United States of nonimmigrant foreign health care workers prior to the publication of regulations implementing section 343 of the Illegal Immigration Reform and immigrant Responsibility Act of 1996 (IIRJPA).

This is the fourth memorandum written concerning this particular issue. The prior memoranda were dated January 28, 1997, June 6, 1997, and August 2-7, 1997 respectively. Copies of the prior memoranda are attached for your reference.

The January 28 memorandum provided that the Immigration and Naturalization Service (INS) and the Department of State (DOS) agreed to exercise discretion pursuant to section 212(d)(3) of the Immigration and Nationality Act in granting a blanket waiver *of* inadmissibility under section 212 (a)(5)(C) for nonimmigrant health care workers lacking the required certificate until such time as appropriate certification procedures *have* been put in place. The Service also waived inadmissibility under section 212(a)(5)(C) pursuant to section 212(d)(3)(3) for aliens already in possession of nonimmigrant visas or who are visa-exempt aliens, including Canadians applying for admission as TNs.

The memorandum went on to state that any otherwise admissible nonimmigrant health *care worker who* receives a waiver for section 212(a)(5)(C) inadmissibility, shall be authorized admission into the United States with a single-entry Form 1-94 with a validity date of six (6) months. 0therwise admissible dependents covered by the blanket policy will also be authorized admission into the United States for a time consistent with that of the principal alien.

The June 6 memorandum provided additional guidance. The memorandum notified Field Offices that the waiver should be granted without the filing of a formal application or fee. Further, that memorandum indicated that any otherwise admissible nonimmigrant health care worker granted a waiver of this provision shall be authorized admission into the United States with a single-entry Form 1-94 valid for six (6) months <u>except in the case of aliens who reside in and commute from contiguous territories. These aliens shall be issued a multiple-entry Form I-94 valid for six (6) months.</u>

This last instruction has created a number of problems at various ports of entry, the northern border. Effective immediately, any foreign health care worker granted a Waiver of the provision described in section 212(a)(5)(C) of the Act, shall be -issued a multiple entry Form 1-94 valid for six months regardless of his or her place of residence. An alien issued an 1-94 under these circumstances may make application for admission to the United States during the validity period of the previously issued 1-94 without requesting a new waiver. TN nonimmigrant aliens are not required to pay the admission fee described in 8 CFR 21 4.6(f) when applying for admission during the validity period of the previously issued 1-94. Until further notice, there is no limit to the number of waivers which a nonimmigrant alien can be granted under section 212(d)(3) of the INA.

Finally, any foreign health care worker granted a waiver of the provision described in section, 212(a)(5)(C) of the Act is eligible to receive an extension of temporary stay after the expiration of the initial 6 month period of admission. There is no limit on the number of extensions of stay which a nonimmigrant alien may be granted provided, of course, the alien is otherwise for an extension of stay.

For further information, please contact Adjudications Officer John W. Brown at 202514-324C.

DOCUMENT NUMBER: FR 73-98

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 245

[INS-1879-97]

RIN 1115-AE73

Interim Procedures for Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule, which has been drafted in consultation with the U.S. Department of Health and Human Services (HHS), amends regulations of the Immigration and Naturalization Service (Service or INS) in order to implement, on a temporary basis, certain portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996 (IIRIRA) as they relate to prospective immigrants. Section 343, which was codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act or INA), provides that aliens coming to the United States to perform labor in covered health care occupations (other than as a physician) are inadmissible unless they present a certificate relating to their education, qualifications, and English language proficiency. This requirement is intended to ensure that aliens possess proficiency in the skills that affect the provision of health care services in the United States. This rule establishes a temporary mechanism to allow applicants for immigrant visas or adjustment of status in the fields of nursing and occupational therapy to satisfy the requirements of section 343 on a provisional basis. The Service expects to publish a proposed rule in the near future which
will implement in full the provisions of section 343.

DATES: Effective date: This rule is effective December 14, 1998.

Comment date: Written comments must be submitted on or before February 11, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1879-97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208. Section 343 of IIRIRA created a new ground of inadmissibility at section 212(a)(5)(C) of the Act for aliens coming to the United States to perform labor in certain health care occupations. Pursuant to section 343, any alien coming to the United States for the purpose of performing labor as a health care worker, other than as a physician, is inadmissible unless the alien presents to the consular officer, or, in the case or adjustment of status, the Attorney General, a certificate from

the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of HHS.

Under section 343, the certificate must verify that: (1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker; are authentic and, in the case of a license, the alien's license is unencumbered; (2) the alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education (DoE), to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicants ability to speak and write English; and, finally, (3) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the alien's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 343 raises a number of important and difficult issues as to its scope and proper implementation and requires extensive coordination between the Service and other Federal agencies. Prior to the publication of this rule, the Service met with representatives of HHS, as well as the United States Trade Representative, the Department of Labor (DOL), the Department of State (DOS), the DoE, the Department of Commerce (DOC), the CGFNS, the National Board for Certification in Occupational Therapy (NBCOT), various professional organizations representing these health care occupations, and many other interested parties.

The Purpose of the Interim Rule

The purpose of this interim rule is to establish temporary procedures which will: (1) Allow the immigration of certain health care workers into the United States on a permanent basis in order to prevent the disruption of critical health care services to the public; (2) provide for the immigration of certain health care workers who were petitioned on a permanent basis prior to the enactment of IIRIRA; and (3) establish a temporary mechanism to ensure that nurses and occupational therapists immigrating to this country have education, experience, and training which are equivalent to a United States worker in a similar occupation.

This interim rule provides a temporary mechanism for implementing section 343 with respect to nurses and occupational therapists. Aliens who obtain a certificate in accordance with this interim rule will be deemed to have satisfied the education, training, and licensing requirements of section 343. Credentialing organizations verifying that an alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application are required to determine, to the best of their ability, whether the alien appears to be classifiable under section 203(b) of the Act. (The Service has substituted the term "admission" for the term "entry," in conformity with section 308(f) of Pub. L. 104-208 which amended the Act.) Although credentialing organizations are required to make certain verifications in accordance with this interim rule, the Service is not in any way deferring or delegating to the credentialing organizations the authority to make binding determinations regarding the alien's admissibility into the United States.

The decision to include nursing and occupational therapy in this interim rule was based on information from DOL that there is a sustained level of demand for foreign-trained workers in these two occupations. Moreover, organizations with an established track record in providing credentialing services exist for these two occupations. For the purposes of this interim rule, the Service finds that these two criteria allow the implementation of section 343 of IIRIRA on a temporary basis.

For the purposes of this interim rule, the term "sustained level of demand" means the presence of an existing demand for foreign health care workers in a particular occupation that is expected to continue in the foreseeable future.

The term "organizations with an established track record" means, for the purposes of this interim rule, an organization which has a record of issuing actual certificates, or documents similar to a certificate, that are generally accepted by the state regulatory bodies as certificates that an individual has met certain minimal qualifications.

The two organizations identified in this rule, the CGFNS for nurses and the NBCOT for occupational therapists, are organizations which have been issuing certificates, or similar documents, for a period of years

and which have attained credibility with the various professional and regulatory bodies which deal with the two occupations listed in this rule. Therefore, the NBCOT and the CGFNS both meet the two criteria identified for inclusion in this interim rule. The Service has not identified other credentialing organizations which have an established track record in providing credentialing services for these two occupations other than the two organizations discussed in this rule.

During the period of time that the interim rule is in effect, the Service will entertain any requests to issue certificates from an organization which demonstrates a proven track record in issuing certificates for a health care occupation and where there is a sustained level of demand for foreign-trained individuals. Such organizations are encouraged to contact the Service at the address provided earlier in the rule.

The implementation of this interim rule on a limited basis also allows the Service additional time to obtain comment on a number of issues which extend beyond near-term immigration issues in nursing and occupational therapy to other policy concerns, such as the overall impact on the public health and the domestic labor market for a variety of health care occupations.

Given the complex nature of the requirements of section 343, the Service will publish a proposed rule in the near future which will, among other things, list all the occupations covered by section 343, further describe the procedures for obtaining and presenting the certificates, describe the standards required for an organization to obtain approval to issue certificates, and describe the procedure whereby an organization's authorization can be terminated by the Service. The Service believes that major issues such as the scope of covered occupations, the standards for obtaining authorization to issue certificates, and the procedure for termination of an organization's authority to issue certificates are better addressed through proposed rule making. The Service expects to publish the proposed rule as soon as possible, within approximately 1 year.

The Service's Temporary Policies and Their Effect

The Service has issued a number of temporary policy guidelines which will continue to apply while the Service develops a rule fully implementing section 343.

Occupations Covered

The current policy of the Service is that section 343 is applicable only to the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference published in the Congressional Record of September 24, 1996, Nos. 132-133, page H10900. The seven occupations are: Nursing, physical therapy, occupational therapy, speech language pathology, medical technology, medical technician, and physician's assistant.

Nonimmigrant Health Care Workers

In order to ensure that health care facilities remain fully staffed and are able to continue to provide the same level and quality of service to the United States public pending promulgation of a final rule, the Service and DOS have agreed to exercise authority under section 212 (d) (3) of the Act and temporarily waive the certification requirement of section 343 for aliens coming to the United States as nonimmigrant care workers. The Service and the DOS have agreed to extend from 6 months to 1 year the period for which such a waiver is granted. This policy will continue until a final rule is published which fully implements section 343.

Immigrant Health Care Workers

There is a two-step process for an alien to become a permanent resident or enter the United States as an immigrant to perform labor as a health care worker. In general, a United States employer must file a Form I-140, Immigrant Petition for Alien Worker, with the Service with the appropriate supporting documentation. The Form I-140 petition establishes the alien's eligibility for the employment-based classification sought. Once the Form I-140 petition is approved by the Service, the alien may apply for an immigrant visa abroad at a consular post or apply for adjustment of status to that of a lawful permanent resident by filing a Form I-485, Application to Register Permanent Resident of Adjust Status in the United States.

The Service has no statutory authority to waive the requirements of section 343 for aliens coming to the United States permanently as immigrants to perform health care services in this country. Thus, the Service has adopted an interim policy whereby, instead of denying the applications for adjustment of status filed by

uncertified aliens seeking to perform labor on a permanent basis in covered health care occupation, such applications are held in abeyance pending promulgation of the implementing regulations. Similarly, the DOS has no statutory authority to issue immigrant visas to such uncertified aliens, and has held visa applications from such persons in abeyance as well. As a result, the number of applications for adjustment of status which have been held in abeyance and the number of aliens unable to obtain immigrant visas has grown to significant proportions. The four service centers have advised that they are holding in excess of 11,000 such adjustment cases in abeyance.

Who Is Affected by the Rule--§ 212.15(a), (b) and (c) This interim rule will apply to aliens coming to the United States as immigrants and to aliens applying for permanent residency to perform labor in the occupations of nurse and occupational therapist. This interim rule does not apply to any other health care occupation. The applications of aliens seeking to engage permanently in any of the other five health care occupations, i.e., physical therapy, speech language pathology, medical technology, medical technician, and physician's assistant, listed in the Joint Explanatory Statement previously cited, will continue to be held in abeyance pending promulgation of a final regulation implementing section 343.

This interim rule does not affect the admission of nonimmigrant aliens coming to the United States to work temporarily in any health care field. Nonimmigrants in the fields or nursing, occupational therapy, physical therapy, speech language pathology, medical technology, medical technician, or physician's assistant will continue to be admitted consistent with the Service's waiver policy previously described.

At this time, the Service has not extended the application of section 343 beyond the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference. The Service, in consultation with HHS, may include additional health care occupations in its forthcoming proposed rule and expects to seek public comment on whether such occupations should be affected by section 343. Until a final regulation implementing section 343 is promulgated, however, the Service (as well as DOS) will continue to deem both immigrants and nonimmigrants in occupations other than the seven listed above to be exempt from the requirements of section 343. Applications for permanent resident status filed by aliens to work in the occupations of speech language pathologist, medical technologist, medical technicians, physical therapists, and physician assistants, however, will continue to be held in abeyance until a final rule is published. Further, the DOS has notified the Service that it will continue its policy of not issuing immigrant visas to aliens coming to the United States to perform labor in these five occupations until a final rule is published.

The Service has interpreted the term "performing labor as a health care worker" to mean providing direct or indirect health care services to a patient. Aliens coming to the United States to perform services in non-clinical health care occupations such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry, therefore, are not covered by the provisions of section 343. Individuals employed in these occupations do not perform patient care and, therefore, are not performing labor in a health care occupation as contemplated in the statute. Nevertheless, aliens who are indirectly involved in the performance of patient care, for example, supervisory nurses, must comply with the provisions of section 343.

Since the statute specifically refers only to aliens who are seeking to enter the United States under section 203(b) of the Act for the purpose of performing labor as health care workers, section 343 does not apply to the spouse and dependent children of such aliens. Dependent aliens are admitted to the United States for the primary purpose of family unity and are merely accompanying the principal alien. Therefore, the admissibility of dependent aliens is not affected by the provisions of section 343. For similar reasons, it is the position of the Service that an alien who has applied for adjustment of status under section 245 of the Act on the basis of a family-sponsored immigrant petition pursuant to section 203(a) of the Act or on the basis of an employment-based immigrant petition in a non-health care occupation does not have to comply with section 343 of IIRIRA.

Additionally, an alien who applies for adjustment of status pursuant to sections 209, 210, 245a, 249 or any other section of the Act is not affected by the provisions of section 343 of IIRIRA. This distinction derives from the fact that section 343 of IIRIRA applies only to aliens who are coming to the United States for the primary purpose of performing labor as a health care worker. Aliens applying for adjustment of status under these statutory provisions, regardless of their ultimate professional goal, will not be deemed to be adjusting status for the purpose of performing labor as a health care worker.

Organization Granted Temporary Approval To Issue Certificates for Nurses and Occupational Therapists--§ 212.15(e)

This rule grants temporary authorization to the CGFNS to issue certificates to aliens coming to the United States on a permanent basis to work in the field of nursing. This rule grants temporary authorization to the NBCOT to issue certificates to aliens coming to the United States on a permanent basis to work in the field of occupational therapy.

Under this interim rule, CGFNS is authorized to issue certificates only for the occupation of nurse, for which it has an established track record of issuing certificates, and not for the occupation of occupational therapy. Since CGFNS does not have an established track record of issuing certificates for occupational therapists at this time, it will be limited to issuing certificates for occupation of nursing for the validity period of this interim rule.

The Service defers consideration of whether CGFNS may be authorized to issue certificates for other health care occupations, including occupational therapy, until the promulgation of its forthcoming proposed rule.

This interim rule authorizes NBCOT, on a temporary basis, to issue certificates in accordance with section 343 for the occupation of occupational therapy. NBCOT is authorized to issue such certificates solely because of NBCOT's proven track record in issuing certificates for the position of occupational therapist and the current acceptance of these certificates by the various state regulatory boards in the field of occupational therapy.

Insofar as this interim rule addresses the certification requirements for aliens seeking to immigrate to the United States, the Service has determined that it is unnecessary to require that the certificate issued by CGFNS or NBCOT be valid for a specific period of time beyond the date of admission or adjustment of status. The Service may nevertheless consider imposing such a validity period in the context of promulgating its proposed rule.

English Language Requirement--§ 212.15(g)

Purusant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA.

The HHS has identified two testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The two testing services are the Educational Testing Service (ETAS) and the Michigan English Language Assessment Battery (MELAB). The new regulation at § 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

In developing the English language test scores, HHS consulted with the DoE and appropriate health care professional organizations. The HHS also examined a study sponsored in part by NBCOT entitled "Standards for Examinations Assessing English as a Second Language" in arriving at these scores. The scores reflect the current industry requirements for the occupations.

Under this interim regulation, an organization approved to issue certificates may use either of the above-named testing services. It should be noted, however, that HHS has determined that occupational therapists should only take the test administered by ETS. The HHS has advised the Service that it made this determination based on the fact that all 50 states have accepted the NBCOT requirements which list the ETS as the only acceptable examination.

In addition, organizations authorized to issued certifications are encouraged to develop a test specifically designed to measure English language skills and seek HHS approval of the test. While HHS has identified MELAB and ETS for purposes of this interim rule, other testing services may submit information about their testing services to the Service so that HHS and the DOE could review whether the testing service should be included in the final rule.

HHS has advised that graduates of health professional programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirements of section 343 of IIRIRA for the duration of the interim rule. The HHS has determined that, for purposes of this rule, aliens who have graduated from these programs have competency in oral and written English because the level of English that they would need to graduate from these programs is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the test described above.

Presentation of the Certificate--§ 212.15(d) and § 245.14

Section 343 of IIRIRA is codified in section 212(a) of the Act as a new ground of inadmissibility. In general, grounds listed in section 212(a) are bars to admission to the United states which must be overcome when an alien applies for admission. This interim rule provides that the certificate must be presented to a consular officer at the time that the alien applies for an immigrant visa and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time the alien applies for an immigrant visa at a consular post abroad and seeks admission or adjustment of status to that of a permanent resident.

The Service and the DOS will consider, in the context of the proposed rulemaking, whether it would be more efficient to review the certificate as part of the review of the alien's qualifications for classification at the time that a Form I-140 is adjudicated by the Service. In this regard, it should be noted that such a filing procedure has long been used with respect to labor certifications under section 212(a)(5)(A) of the Act.

Good Cause Exception

This interim rule is effective 60 days from the date of publication in the Federal Register. The Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. Although section 343 went into effect on September 30, 1996, due to the complexities of the requirements of section 343, and the need to coordinate the interests and concerns of a great number of Federal agencies, the health care sector, and members of the affected public, the Service is still in the process of developing a proposed rule in order to solicit comment from the public. A continued delay in the implementation of this provision, however, could have a negative effect on the availability of health care in this country, particularly in medically under-served areas for nursing and occupational therapy, and will create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objective. The health care workers who will be issued certificates are not considered small entities as the term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

The information required on the certificate for health care workers showing that the alien possesses proficiency in the skills that affect the provisions of health care services in the United State (as provided in § 212.15(f)) is considered an information collection. Since a delay in issuing this interim rule could create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation, the INS is using emergency review procedures, for review and clearance by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (PRA) of 1995.

The OMB approval has been requested by November 13, 1998. If granted, the emergency approval is only valid for 180 days. Comments concerning the information collection should be directed to: Office of Information and Regulatory Affairs (OMB), OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

During the first 60 days of this same period a regular review of this information will also be undertaken. Written comments are encouraged and will be accepted until December 14, 1998. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 7,000 certificates will be issued annually. The Service also estimates that it will take the testing entity approximately 2 hours to comply with the requirements. This amounts to 14,000 total burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch (HQPDI), 425 I Street NW., Room 5307, Washington, DC 20536.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212--DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.15 is added to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) Inadmissible aliens. With the exception of the aliens described in paragraph (b) of this section, any alien coming to the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible to the United States unless the alien presents a certificate as described in paragraph (f) of this section.

(b) Inapplicability of the ground of inadmissibility. The following aliens are not subject to this ground of inadmissibility:

(1) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical health-care occupation is one where the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry;

(2) The spouse and dependent children of any immigrant alien who is seeking to immigrate in order to accompany or follow to join the principal alien; and

(3) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than an alien who is seeking to immigrate on the basis of an employment-based immigrant visa petition which was filed for the purpose of obtaining the alien's services in a health care occupation described in paragraph (c) of this section.

(c) Occupations affected by this provision. With the exception of the aliens described in paragraph (b) of this section, any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training, is subject to this provision:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(d) Presentation of the certificate. An alien described in paragraph (a) of this section who is applying for admission as an immigrant seeking to perform labor in a health care occupation as described in this section must present a certificate to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time of visa issuance and admission at a port-of-entry, or, if applicable, at the time of adjustment of status.

(e) Organizations approved by the Service to issue certificates for health care workers. (1) The Commission on Graduates of Foreign Nursing Schools is authorized to issue certificates under section 343 for

the occupation of nurse. (2) The National Board for Certification in Occupational Therapy is authorized by the Service to issue certificates under section 343 for the occupation of occupational therapist.

(f) Contents of the certificate. A certificate must contain the following information:

(1) The name and address of the certifying organization;

(2) A point of contact where the organization may be contacted in order to verify the validity of the certificate;

(3) The date of the certificate was issued;

(4) The occupation for which the certificate was issued;

(5) The alien's name, and date and place of birth;

(6) Verification that the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(7) Verification that the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(8) Verification that the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States as an immigrant under section 203(b) of the Act. This verification is not binding on the Service; and

(9) Verification either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of States licensing the occupation for which the certificate is issued, or that the alien has passed the occupation's licensing or certification examination.

(g) English testing requirement. (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of Health and Human Services has determined that an alien must have a passing score on one of the two tests listed in paragraph (g)(3) of this section before he
or she can be granted a certificate.

(2) Aliens exempt form the English language requirement. Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirement.

(3) Approved testing services.

(i) Michigan English Language Assessment Battery (MELAB).

(ii) Test of English as a Foreign Language, Educational Testing Service (ETS).

(4) Passing scores for various occupations. (i) Occupational
therapists. An alien seeking to perform labor in the United States as an occupational therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL), Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. Certifying organizations shall not accept the results of the MELAB for the occupation of occupational therapists. Aliens seeking to obtain a certificate to work as an occupational therapist must take the test offered by the ETS. MELAB scores are not acceptable for these occupations.

(ii) Registered nurses. An alien coming to the United States to perform labor as a registered nurse must obtain the following scores to obtain a certificate: ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(iii) Licensed practical nurses and licensed vocational nurses. An alien coming to the United States to perform labor as a licensed practical nurse or licensed vocational nurse must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

PART 245--ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

4. Section 245.14 is added to read as follows:

§ 245.14. Adjustment of status of certain health care workers.

An alien applying for adjustment of status to perform labor in a health care occupation as described in 8 CFR 212.15(c) must present evidence at the time he or she applies for adjustment of status, and, if applicable, at the time of the interview on the application, that he or she has a valid certificate issued by the Commission on Graduates of Foreign Nursing Schools or the National Board of Certification in Occupational Therapy.

Memorandum issued October 20, 1999 from Michael Cronin, Acting Associate Commissioner, Programs through William Yates, Deputy Executive Associate Commissioner, Immigration Services Division, Field Operations

Reference: HQ 70/23.1PHQ 70/21.1.14-P
HQ 50/5.12 996 ACT.069

SUBJECT: **Update on the Temporary Admission of Foreign Health Care Workers**

The Service published an interim rule on October 14, 1998 that implemented portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The rule addressed only aliens applying for immigrant visas or adjustment of status to a permanent resident coming to the United States to perform services in a limited number of health care occupations. The Service's prior instructions, dated January 28, 1997, June 6, 1997, August 27, 1997, and April 30, 1998, relating to the temporary admission of heath care workers will remain in effect until the publication a final rule implementing section 343 of IIRIRA in full.

This office expects to publish a final rule within I year that will implement the provisions of section 343 of IIRIRA in full. In view of this time frame, the Service, in conjunction with the Department of State (DOS), has now determined that foreign heq1th care workers affected by section 343 of IIRIRA may be admitted to the United States for a period of I year, not 6 months as previously instructed. Of course, the alien must meet all other regulatory and statutory requirements for admission. Again, Service officers should continue to apply the instructions contained in the prior memoranda, other than the length of admission for a nonimmigrant alien. The following represents a summary of the instructions contained in the four previous memoranda.

The Service and the DOS agreed to exercise discretion pursuant to section 212(d)(3) of the Immigration and Nationality Act in granting a blanket waiver of inadmissibility under section 212 (a)(5)(C) for nonimmigrant health care workers lacking the- required certificate until such time as appropriate certification procedures have been put in place. The Service also waived inadmissibility under section 212(a)(5)(C) pursuant to section 212(d)(3)(B) for aliens already in possession of nonimmigrant visas or who are visa-exempt aliens, including Canadians applying for admission as TN's. The waiver should be granted without the filing of a formal application or fee.

An otherwise admissible nonimmigrant health care worker who receives a waiver for section 212(a)(5)(C) inadmissibility, shall be authorized admission into the United States for a period of I year. Otherwise admissible dependents covered by the blanket policy will also be authorized admission into the United States for a time coinciding with that of the principal alien. An alien admitted to the United States under these circumstances may make application for admission to the United States during the validity period of the previously issued 1-94 without requesting a new waiver. TN nonimmigrant aliens are not required to pay the admission fee described in 8 CFR 214.6(f) when applying for admission during the validity period of the previously issued I94. There is no limit to the number of waivers that a nonimmigrant alien can be granted under section 212(d)(3) of the INA. Aliens admitted to the United States under this blanket waiver policy are eligible for extensions of stay in increments of I year. The total period of temporary stay for specific nonimmigrant classifications as described in regulation and statute is not affected by this policy.

For further information, please contact Adjudication Officer John W. Brown at 202-616-7435.